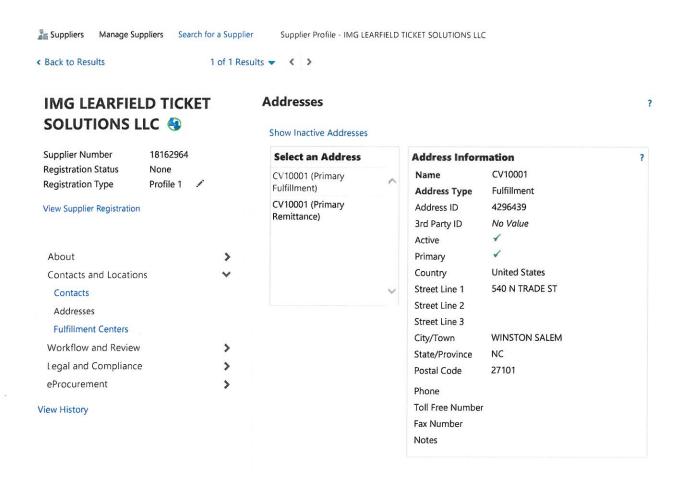
Wes	West Virginia University		FY	Buyer	Date	Acct #		P. O Date	Order #			
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			lutions, LLC	ır			West Virginia L					
540 Nort Winston		01				Procurement C One Waterfron Morgantown, V	t Place,					
Item#	Quantity	Unit M				Descript	tion			Unit Price	Extended Price	
		Change Order #4 PLEASE REVISE THE ORIGINAL PURCHASE ORDER/AGREEMENT AS FOLLOWS: RE: To Provide Ticketing Solutions Original Name: IMG Ticketing Solutions New Name and Remit to Address: IMG Learfield Ticket Solutions, LLC (This name has been on all IMG documents relating to the contract from inception) Effective Date: January 2019										
Reason Name C		ge:						Previou	us Total:	\$	Open End	
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fiscal year service.	unding Paragraph ervice performed under this contract is to be continued in the succeeding scal year contingent upon funds being appropriated by the Legislature for this ervice. In the event funds are not appropriated for this service, this contract ecomes of no effect and is null and void after June 30. January 23, 2019											

Approved

WVU FOIA #19209 (SUP)-001

Date

Procurement Officer



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Wes	t Virgii	nia U	niversity	FY	Buyer	Date	Acct #		P. O Date	Order #	
_ Purchase Change Request			Request	18	V	4/26/2018	VARIO	DUS	6/24/2014	U14	TICKET
Document Requisition (Cancellation Only) Regular Purchase Order Contract Purchase Order X Open End Contract Purchase Order Agreement Vendor Name, Address, FEIN, Phone of IMG Ticketing Solutions 540 North Trade St Winston-Salem, NC 27101				Cancella Increase	/Decrease Balance(\$25.00 Maximun	Spending U West Virginia	Change of Other Other nit Name a University t Contraction Place				
	0 "					Deserte	Morgantown	, WV 2650	6		
Item#	Item# Quantity Unit M Description Change Order #3								Unit Price	Extended Price	
	PLEASE REVISE THE ORIGINAL PURCHASE ORDER/AGREEMENT AS FOLLOWS:								ENT AS FOLLOWS:		
	RE: To provide Ticketing Solutions										
	Addition of Second Amendment to the Consulting Services Agreement, as well as all the terms and Conditions contained in the original contract and changes in the scope of work.										
			RENEWAL PE	ERIOD:	July 1	l, 2017 - February	28, 2022				
			Effective Date	: May	1, 2018	3					
Reason for Change: Addition of Second Amendment to the Consulting Services Agreeme					Services Agreeme	nt	Previou	ıs Total:	\$	Open End	
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Service p	performed		this contract is			I in the succeeding					

Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after June 30.

Mic	helle Royce	April 26, 2018	
approved	Procurement Officer	Date	

SECOND AMENDMENT TO CONSULTING SERVICES AGREEMENT

This Second Amendment to Consulting Services Agreement ("Second Amendment") is effective as of May 1, 2018 ("Second Amendment Effective Date") by and between **the West Virginia University Board of Governors on behalf of West Virginia University, and its Athletics Department** ("University"), having an address at P.O. Box 0877, Morgantown, West Virginia 26507-0877, and **IMG Learfield Ticket Solutions**, **LLC** ("Ticket Solutions"), a Delaware limited-liability company with offices at 540 North Trade Street, Winston-Salem, North Carolina 27101.

WHEREAS, University and Ticket Solutions entered into that certain Consulting Services Agreement, effective as of June 1, 2014 ("Agreement"), as modified by that certain First Amendment to Consulting Services Agreement, effective as of July 1, 2017 ("First Amendment"); and

WHEREAS, University and Ticket Solutions now desire to amend and make certain modifications to the Agreement to the extent set forth below.

NOW, THEREFORE, in accordance with these recitals and in consideration of the mutual promises and covenants hereafter set forth, the parties mutually agree as follows:

- 1. The Parties acknowledge and agree that Ticket Solutions will pay for renovations to be made (only) to the office space where Ticket Solutions' staff is housed at University, the specifics and pricing of such renovations to be determined solely by Ticket Solutions. As consideration for Ticket Solutions' payment for the renovations, University shall reduce Ticket Solutions' rent payment owed to University for such office space by Nine Hundred Dollars (\$900.00) each Contract Year. Accordingly, as of the Second Amendment Effective Date, Ticket Solutions shall pay University Three Thousand Six Hundred Dollars (\$3,600.00) for renting office space each Contract Year (Three Hundred Dollars (\$300.00) per month), and in Section II(a) of Exhibit A of the Agreement, "Four Thousand Five Hundred Dollars (\$4,500.00)" shall be changed to "Three Thousand Six Hundred Dollars (\$3,600.00)".
- 2. Except as otherwise set forth herein, the Parties agree to be bound by the remaining unchanged provisions in the Agreement and First Amendment. This Second Amendment, together with the unchanged provisions of the Agreement and First Amendment, shall supersede any and all other agreements between the Parties, and any rights or obligations arising out of the Agreement and First Amendment shall be merged herein and governed by the terms herein. In the event of a conflict between the terms of this Second Amendment and the terms of the Agreement or First Amendment, the terms of this Second Amendment will take precedence.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be duly executed by their authorized representatives.

West Virginia University Board of Governors on behalf of West Virginia University, and its Athletics Department

By: Michelle Royce
Name: Michelle Royce
Title: Category Manager
Date: April 26, 2018

IMG Learfield Ticket Solutions, LLC

Name: Rob Sine

Date: President

Wes	t Virgiı	nia U	niversity	FY	Buyer	Date	Acct #		P. O Date	Order #	
_Purch	ase Cha	nge R	equest	18	V	12/18/2017	VARIOU	ıç	6/24/2014	U14 ⁻	TICKET
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Vendor Name, Address, FEIN, Phone # IMG Ticketing Solutions 540 North Trade Street Winston-Salem, NC 27101							Spending Uni West Virginia Procurement, One Waterfror PO Box 6024 Morgantown, V	Jniversity Contracti nt Place	y ng, & Payment Services		
Item#	Quantity	Unit M				Descri	ption			Unit Price	Extended Price
						Change Order #	2				
	PLEASE AMEND THE CONTRACT AS FOLLOWS:										
	To renew open end contract										
	Renewal Period: July 1, 2017 - February 28, 2022										
Effective Date: July 1, 2017											
To furnish the following: Ticketing Solutions											
Reason		_									
Renewa	I of Cont	ract						Previou	s Total:	\$	Open End
								Increas	e	\$	
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Funding	Paragrap	<u> </u>									
Service performed under this contract is to be fiscal year contingent upon funds being approthis service. In the event funds are not appropriately contract becomes of no effect and is null and					ited by t ted for t	he Legislature for his service, this	Mi	chel	lls Royce	Decem	ber 18, 2017
							Approved		Procurement Officer	[Date

FIRST AMENDMENT TO CONSULTING SERVICES AGREEMENT

This First Amendment to Consulting Services Agreement ("First Amendment") is made and entered into as of July 1, 2017 ("First Amendment Effective Date") by and between the **the West Virginia University Board of Governors on behalf of West Virginia University, and its Athletics Department** ("University"), having an address at P.O. Box 0877, Morgantown, West Virginia 26507-0877, and **IMG Learfield Ticket Solutions**, **LLC** ("Ticket Solutions"), a Delaware limited-liability company with offices at 540 North Trade Street, Winston-Salem, North Carolina 27101.

WHEREAS, University and Ticket Solutions entered into that certain Consulting Services Agreement, effective as of June 1, 2014 ("Agreement"); and

WHEREAS, University and Ticket Solutions now desire to amend and make certain modifications to the Agreement to the extent set forth below.

NOW, THEREFORE, in accordance with these recitals and in consideration of the mutual promises and covenants hereafter set forth, the parties mutually agree as follows:

- 1. Section 4.a. of the Agreement shall be deleted in its entirety and replaced with the following:
 - This Agreement shall be effective as of the Effective Date and remain in effect for eight (8) Contract Years (as defined hereinafter), unless earlier terminated or modified as set forth herein. Between December 1, 2021 and February 28, 2022 ("Exclusive Negotiation Period"), the Parties shall negotiate exclusively and in good faith with respect to a renewal of this Agreement on mutually agreed upon terms and conditions. Prior to the expiration of this Exclusive Negotiation Period, University agrees it will not negotiate with or enter into discussions with any other parties or Ticket Solutions competitors for the same or similar services, exercisable either during the term of this Agreement or for the period following such term. Within five (5) days after the end of the Exclusive Negotiation Period, if the Parties have not yet reached a mutual agreement with respect to extending this Agreement, then University will present to Ticket Solutions a written offer, which shall include financial terms and a description of the scope of services on which University would agree to extend the term of this Agreement or otherwise provide for delivery of the Services following the term of this Agreement ("Extension Offer"). If Ticket Solutions does not agree to accept the Extension Offer within ten (10) business days after receiving it, University, then, may negotiate with third parties, but University agrees it will not enter into an agreement with another party on financial terms less favorable to University (than those presented in the Extension Offer) or for a different term without first offering such opportunity in writing to Ticket Solutions, and providing Ticket Solutions ten (10) business days in which to accept such opportunity. "Contract Year" shall be defined as each twelve (12) month period from July 1 through June 30 during this Agreement; provided, however, the first Contract Year shall be defined as the period from the Effective Date through June 30, 2015."
- 2. As of the First Amendment Effective Date, the following subsection shall be added to Section I of Exhibit A of the Agreement:

"h. Each Contract Year, Ticket Solutions will invest up to Seventy Thousand Dollars (\$70,000.00) on University's behalf in mutually agreed-upon ticketing intelligence tools. No unused portion of such investment in a Contract Year may be carried over into a subsequent Contract Year, and such investment will be pro-rated, as necessary, should this Agreement terminate early."

Examples of ticketing intellegence tools could include; Salesforce CRM, Paciolan Marketing Automation, Mogo and Dialsource.

- 3. As of the First Amendment Effective Date, the fourth bullet point under the <u>Fees</u>. section of <u>Exhibit B</u> of the Agreement shall be deleted in its entirety and replaced with the following:
 - Five percent (5%) of the amount of all revenue received by University on the sale of full-season tickets, previously sold by Ticket Solutions sales staff, constituting or generating Ticket Solutions Renewal Revenue.
- 4. "Baseball" shall be added to the "University Athletics Events" definition in the <u>Definitions</u>. section of <u>Exhibit B</u> of the Agreement.
- 5. Except as otherwise set forth herein, the Parties agree to be bound by the remaining unchanged provisions in the Agreement. This First Amendment, together with the unchanged provisions of the Agreement, shall supersede any and all other agreements between the Parties, and any rights or obligations arising out of the Agreement shall be merged herein and governed by the terms herein. In the event of a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment will take precedence.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be duly executed by their authorized representatives.

Governors on behalf of West Virginia	· · · ·		,
University, and its Athletics Department	e .	17 5:	
By: Jam Br	By:	KOS	
Name: David Benel Title: Chief Procument Officer	Name:	Rob SIne	
Title: Chief Procurent Officer	Title:	President	
Date: \$/23/17	Date:	8/23/17	

West Virginia University Board of

IMG Learfield Ticket Solutions, LLC

We	st Virginia	University	FY	Buyer	Date	Acct#	P. O Date	Order#		
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Vendo	r Name, Address	, FEIN, Phone#				Spending Unit Name &	Address			
54	G Ticketing S 0 North Trade nston-Salem,	Street				West Virginia University Athletic Department ATTN: Matt Wells P.O.Box 0877 Morgantown, WV 26506 (304) 293-3088				
Item#	Quantity	Unit M			Desc	ription		Unit Price	е	Extended Price
			To char per s	Change Order #1 RE: Ticketing Solutions To change the end date of the contract to be 12/1/2017 per section 4.a of original contract. CONTRACT TERM: June 1,2014 to December 1, 2017						
	son for Change:						Prev			Open End
Erro	or on original c	ontract cover pa	age.						_	0.00
									_	0.00
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Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after June 30.

And know	2/2/15
Procurement Officer	Date



Procurement, Contracting & Payment Services One Waterfront Place / 3rd Floor / Don Knotts Blvd PO Box 6024 Morgantown WV 26506 Ph: 304-293-5711

Number:

U14TICKET

Please show this number on all packages and documents related to this Order.

Page 1 of 11

Visit WVU PCPS on the internet: http://pcps.wvu.edu

Vendor: **IMG Learfield Ticket Solutions** 540 North Trade Street Winston-Salem, NC 27101

Ship To: West Virginia University Athletic Department ATTN: Matt Wells PO Box 0877 Morgantown, WV 26506 (304) 293-3088

Invoice To:

West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd PO Box 6024

Morgantown WV 26506-6024 Ph: 304-293-5711

> Itemize Invoices According to Purchase Order One (1) original invoice required

Date of Order / Buyer: June 24, 2014 T. Collins

Payment Terms: 30 Net

Ship Via: N/A

FOB: N/A Freight Terms:

Delivery Date: N/A

Per Agreement

AGREEMENT

This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University **IMG Learfield Ticket Solutions**

Ticketing Solutions for:

Services beginning June 1, 2014 and extending through

June 30, 2015

All services shall be performed in accordance with the standard form of agreement attached hereto as a part hereof.

If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work.

Total Amount of this Order:

\$ Open-End

Authorized Purchasing Agent Signature:

SEE PAGE 5 FOR APPROVALS

WVU FOIA #19209 (SUP)-010

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement ("Agreement") is effective as of June 1, 2014 ("Effective Date"), by and between the West Virginia University Board of Governors on behalf of West Virginia University, and its Athletics Department ("University"), having an address at P.O. Box 0877 Morgantown, West Virginia 26507-0877, and IMG Learfield Ticket Solutions, LLC ("Ticket Solutions"), a Delaware limited-liability company with offices at 540 North Trade Street, Winston-Salem, North Carolina 27101. University and Ticket Solutions may hereinafter be referred to individually as "Party" and collectively as "Parties".

WHEREAS, University desires to engage and retain Ticket Solutions to provide certain consulting and program-management services ("Services") set forth in this Agreement and in the attached Exhibit A, incorporated by this reference and made a part hereof; and

WHEREAS, Ticket Solutions desires to provide University the Services.

NOW, THEREFORE, in accordance with these recitals and in consideration of the premises and mutual covenants herein contained, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Engagement of Ticket Solutions.

As of the Effective Date, University engages and retains Ticket Solutions on an exclusive third-party basis and Ticket Solutions accepts such engagement, on terms and conditions provided herein, as a University independent consultant, performing the Services. So long as Ticket Solutions is providing the Services pursuant to this Agreement, University agrees not to engage any third party to perform any of the Services.

2. Authority of Ticket Solutions.

Ticket Solutions shall regularly report to University's representative identified in Exhibit A (or any other University-appointed representative) its performance of the Services. In connection with and while performing the Services, Ticket Solutions shall abide by and respect University's rules, policies, procedures and standards. Where not required herein or by applicable law or regulation, Ticket Solutions shall not require University's prior approval to perform its duties under this Agreement.

Compensation of Ticket Solutions.

As consideration for performing the Services, University will pay Ticket Solutions fees ("Fees") in accordance with the provisions set forth in the attached <u>Exhibit B</u>, incorporated by this reference and made a part hereof.

4. Term and Termination,

a. This Agreement shall be effective as of the Effective Date and remain in effect for three (3) Contract Years (as defined hereinafter), unless earlier terminated or modified as set forth herein. It shall automatically extend for two (2) additional one (1) year periods unless

University provides Ticket Solutions written notification of its desire to terminate on or before December 1, 2016 (for the first extension) or December 1, 2017 (for the second extension). "Contract Year" shall be defined as each twelve (12) month period from July 1 through June 30 during this Agreement; provided, however, the first Contract Year shall be defined as the period from the Effective Date through June 30, 2015.

- b. If a Party materially breaches this Agreement, and such breach goes uncured for a period of thirty (30) days following notice from the non-breaching Party, then the non-breaching Party may terminate this Agreement, effective immediately, by written notice to the breaching Party.
- c. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Ticket Solutions acknowledges financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and/or otherwise made available, at University's sole and absolute discretion. In the event funds are not appropriated, budgeted or otherwise available for the Services beyond the current fiscal year, then this Agreement will become void and of no effect after June 30 of the current fiscal year.

5. <u>Independent Contractor</u>.

Ticket Solutions shall be an independent contractor and nothing in this Agreement shall be deemed or construed to: (i) create a partnership or joint venture between University and Ticket Solutions; (ii) cause Ticket Solutions to be responsible in any way for University's (or any other party's) debts, liabilities or obligations; or (iii) constitute Ticket Solutions or any of its employees as University employees, officers or agents. Ticket Solutions shall, at all times, make clear in writing to its employees and contractors such persons are not entitled to any compensation, benefit or other consideration of any kind from University. Further, Ticket Solutions shall indemnify, defend and hold harmless University from and against any claim by any Ticket Solutions employee or contractor against University arising in connection with Ticket Solutions' performance of the Services hereunder; provided, however, such indemnification shall not be applicable or required in the event of any claim of gross negligence or willful misconduct asserted by the Ticket Solutions employee or contractor against University.

6. Confidentiality.

- a. In connection with the Services, University will provide Ticket Solutions with (i) certain Confidential Information (as defined hereinafter) and (ii) access to certain University clients, employees and customers, as determined by University, in its sole discretion. Similarly, Ticket Solutions will provide University, its employees and agents with certain Confidential Information (also defined hereinafter). In order to facilitate Ticket Solutions' performance of its responsibilities hereunder, University agrees to provide Ticket Solutions access to its database of information concerning University alumni, fans and supporters, including information with respect to telephone numbers and e-mail addresses, prior ticket purchases and prior donations.
- b. Each Party will (i) only use Confidential Information it receives from the other Party in conjunction with the Services and (ii) keep Confidential Information confidential. Neither Party, including its employees and/or agents, will use and Confidential Information or disclose any Confidential Information to any person or entity in any manner whatsoever, in

whole or in part, unless it becomes legally compelled to do so, so long as the disclosing Party provides the other Party with prompt written notice of such request(s) so the other Party may seek a protective order or other appropriate remedy. Further, to the extent applicable to any student information hereunder, Ticket Solutions shall comply with the Family Educational Rights and Privacy Act. Immediately upon terminating this engagement, Ticket Solutions will deliver to University all University's Confidential Information Ticket Solutions possesses and University will deliver to Ticket Solutions all Ticket Solutions' Confidential Information University possesses.

- c. Nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any (i) Confidential Information disclosed pursuant to this Agreement or (ii) invention or any patent, copyright, trademark or other intellectual-property right issued (or that may be issued) based on any Confidential Information. University and Ticket Solutions shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information.
- d. As used herein, University's "Confidential Information" includes any and all information University provides Ticket Solutions, including, but not limited to, financial, customer, employee and student information and/or materials University designates "confidential". Additionally, as used herein, Ticket Solutions' "Confidential Information" includes any and all confidential or proprietary property, including financial terms, and information Ticket Solutions designates "confidential" when providing University such information or materials.
- e. Confidential Information does not include any information that was (i) or has/will become available to the public through no fault of University or Ticket Solutions, (ii) in University's or Ticket Solutions' possession, free of any obligation of confidence, at the time it was communicated to University or Ticket Solutions or (iii) rightfully communicated to or obtained by University or Ticket Solutions, free of any obligation of confidence, subsequent to the time it was communicated by (i) the disclosing Party under this Agreement (ii) University or Ticket Solutions to a third party, free of any obligation of confidence.
- f. Notwithstanding anything to the contrary herein, Ticket Solutions understands and agrees and shall hold University harmless relating to all University's obligations under and subject to Freedom of Information Acts and laws of the State of West Virginia and nothing herein shall prevent or limit University's obligations as required by law.

Ticket Allocations and Solicitations.

Each Contract Year, University will make accessible to Ticket Solutions, for Ticket Solutions' use in performing the Services all available regular-season full-season, partial-plan, group and other tickets for all University Athletic Events (as defined hereinafter) no more than thirty (30) days before, but not after, the date University made such tickets available for sale in the year directly preceding this Agreement. Ticket Solutions will solicit ticket sales at prices University sets for such events and pursuant to the terms and conditions applicable for the events as established by University for all tickets sold for such events. University will be responsible for processing payments related to all tickets Ticket Solutions (sells for University Athletic Events, including processing credit-card payments, paying applicable fees associated with credit-card services, remitting all required local, sales and other taxes due with respect to such sales and

paying any other fees due to government entities or agencies as a result of such sales. University will also be responsible for ticket printing and distribution, including shipping and delivery to applicable fans and purchasers. University shall (i) account for all ticket sales and (ii) pay Ticket Solutions its revenue-share amount on each settlement date, as provided in Exhibit B.

8. Assignment.

Neither Party may assign, transfer or convey any of its rights, duties or interests under this Agreement. Nor shall it delegate any obligations or duties it is required to keep or perform under this Agreement; provided, however, University agrees no such consent shall be required for, and University consents to, Ticket Solutions' assigning this Agreement to an entity owned or controlled by or under common control with Ticket Solutions.

9. Notices.

All notices, demands, consents, approvals and requests given by either Party to the other hereunder shall be in writing and personally delivered, or sent by nationally-recognized overnight delivery service, to such Party at the addresses set forth in the attached Exhibit C, incorporated by reference and made a part hereof.

10. Nonexclusive Representation.

University and Ticket Solutions mutually agree Ticket Solutions may provide similar services to other colleges and/or universities and, without limitation, may engage in other related businesses and ventures. Such representation shall not constitute a violation of Ticket Solutions' obligations hereunder.

11. Severability.

Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If, to any extent, any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

12. No Waiver.

Failure by a Party to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment of such right, remedy or election, but the same shall continue and remain in full force and effect. All rights and remedies a Party may have at law, in equity or otherwise upon breach of any term or provision of this Agreement shall be distinct, separate and cumulative rights and remedies, and none, whether exercised, shall be deemed to exclude another.

13. Entire Agreement.

This Agreement (including its exhibits) contains the entire agreement between the Parties with respect to the specific subject matter herein. Any agreement hereafter made shall be

ineffective to affect any change or modification, in whole or in part, unless such agreement is established in a written document signed by the Party against which enforcement of the change or modification is sought.

14. University Representation and Warranty.

University represents and warrants to Ticket Solutions it will (i) conduct University Athletic Events in accordance with the applicable schedule University makes public before each athletics season, (ii) fulfill all terms and conditions with respect to tickets for University Athletic Events, (iii) be responsible for ensuring its ticketing system assigns (a) seats consistent with its venues' seating and (b) only one (1) available ticket for each available seat per event and (iv) ship and deliver all tickets for University Athletic Events to any purchasers secured by Ticket Solutions pursuant to this Agreement. Additionally, University represents and agrees, without Ticket Solutions' prior written consent or until a date more than twelve (12) months following this Agreement's termination, University (including any University department, division or affiliate) will not solicit, employ or engage as an employee or independent contractor, for a position involving ticket sales or ticket-sales management for University Athletic Events, any person who is/was (i) a Ticket Solutions employee or independent contractor and (ii) directly involved in providing University the Services.

15. Jurisdiction; Governing Law.

The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement. All disputes arising out of related to this Agreement shall be filed by Ticket Solutions in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.

16. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly exercised by their authorized representatives as of the date first above written.

West Virginia University

By:

Title: Vice

Administration and Finance

IMG Learfield Ticket Solutions, LLC

Dv

itle: Serie

Approved as to form prior to acknowledgment thereof

his day of , 20
Patrick Morrisey, Attorney General

By: Chief Counsel

5

Exhibit A Services

- Ticket Solutions shall provide University the following Services:
 - a. Outsourced ticket-sales services for University's ticketed events, including engaging personnel to perform such ticket-sales services, to include an on-site, full-time general manager and account executives reporting to such general manager who will participate in sales activities; Ticket Solutions (i) shall be responsible, with University's prior consultation, for all staff recruitment (including position postings, applicant screenings and candidate interviews) and hiring, as well as employee relocation and human resources and (ii) at its discretion, may also hire part-time personnel to supplement the sales efforts of its full-time sales staff; assuming compliance with applicable law, Ticket Solutions will have sole and absolute discretion with respect to any and all terms and conditions applicable to its employees or independent contractors, including, but not limited to, their scheduled work hours, pay rate(s), benefits (if any) and bonuses/commissions;

b. Staff training in ticket-sales (best practices), inter-department protocol/solutions (including customer service);

c. Sales-campaign and marketing strategies (with respect to new acquisitions, partialplan and group-ticket sales and retention), working closely with University (including its senior administration, ticket operations, athletic marketing, development office and other departments, as identified);

d. Overall sales-program management, monitoring and strategy development, including providing University regular updates/progress reports on a schedule upon which the Parties mutually agree and as University reasonably requests;

- e. Cost coverage for the TeleForum package, which includes (i) two (2) standard BoomeRang, pre-call invitations (customer voice broadcasting for a list size of up to 20,000 per campaign, (ii) two (2) TeleForum events (for a list size of up to 20,000 per event), (iii) 1to1 Voice (customized BoomeRang feature, by first name), (iv) SMS messaging (ability to send out texts to participants in TeleForum event), (v) custom music hold, (vi) in-bound, toll-free TeleForum participation (up to 200 participants per event) and (vii) unlimited real-time transfers for TeleForum:
- f. Office space design/set-up, telephone-call-room infrastructure assistance and recommendations; and
- g. As the Parties mutually agree, soliciting sales of additional University-related products other than tickets (including, but not limited to, multi-media products such as season-highlight DVDs/videos, etc.).

Ticket Solutions shall report its performance of the Services regularly and upon request to: Oliver Luck, Director of Athletics, P.O. Box 0877 Morgantown, West Virginia 26507-0877.

Ticket Solutions shall provide ticket services for University Athletic Events for (i) the following athletic teams: football; men's basketball; women's basketball and any others upon which the Parties mutually agree, as well as (ii) additional mutually agreed upon activities/events for which University has the right to sell tickets.

- II. Ticket Solutions shall be responsible for the following costs, in order to facilitate Ticket Solutions' performance of the Services:
 - a. Office space (for which Ticket Solutions is responsible for renting (for approximately Four Thousand Five Hundred Dollars (\$4,500.00) each Contract Year) conducive to performance of the Services and all necessary office equipment (i.e., office furniture (including, but not limited to, desks, office chairs, cubicles and telephone headsets), computers and telephones with which Ticket Solutions' general manager and sales representatives can perform the Services appropriately); and

b. Telephone lines (including for traditional local and long-distances ervices and direct telephone lines for Ticket Solutions' general manager and sales representatives) and Internet services.

III. University shall provide the following, at no cost to Ticket Solutions, in order to facilitate Ticket Solutions' performance of the Services:

a. Computer and other information-technology support;

- b. Individual access to University's full-ticketing databases/systems (including current and previous season-ticket holders for all sports, single-game buyers, non-renewed season-ticket holders, approved donors, athletic-department vendors, alumni, marketing and other to-be-identified databases/systems) for Ticket Solutions' general manager and sales representatives;
- c. Credentialed access for Ticket Solutions' staff (including the general manager and those sales representatives upon which the Parties mutually agree) to athletic, coaching and development events;
- d. A mutually agreed upon number of University home football, men's basketball and women's basketball full-season tickets for prospecting, client entertainment and customer service:
- e. Software training with respect to ticket processing (and additional help, as needed, related thereto);
- f. Ticket operations (including seat designations, ticket printing and shipping services) and all ticket-payment processing;
- g. Sales collateral and marketing material (including convention-type displays); and
- h. Approved use of University's logos, indicia and photographs.
- IV. Each Party will inform the other Party immediately of any unforeseen change(s), new development(s) or other issue(s) (including, but not limited to, scheduling conflicts, emerging peripheral issues thought to warrant the other Party's attention, etc.) that may affect and/or influence this engagement.

Exhibit B Fees

<u>Fees</u>. As consideration for the Services, each Contract Year University shall pay Ticket Solutions revenue shares calculated as follows:

- Thirty-two and one-half percent (32.5%) of the amount of the face value of all full-season tickets (whether or not requiring a donation) sold constituting or generating Ticket Solutions New Sales Revenue (as defined hereinafter), where tickets sold are for University Athletic Events (which specifically shall not include any Ticket Solutions Renewal Revenue (as defined hereinafter));
- Thirty-five percent (35%) of the amount of the face value of all partial-plan, mini-pack, group and single-game tickets sold constituting or generating Ticket Solutions New Sales Revenues, where tickets sold are for University Athletic Events (which specific shall not include any Ticket Solutions Renewal Revenue);
- Zero percent (0%) of the amount of the face value of all game-day, walk-up tickets sold, all of which University shall handle; and
- Five percent (5%) of the amount of all revenue received by University on the sale of full-season tickets, previously sold by Ticket Solutions sales staff, constituting or generating Ticket Solutions Renewal Revenue until an eighty percent (80%) rate on such sales is achieved, then seven percent (7%) for all such sales between eighty percent (80%) and ninety percent (90%) and, finally, ten percent (10%) all such sales over ninety percent (90%).

Bonus Options. If, in any Contract Year, Ticket Solutions generates Ticket Solutions New Sales Revenue from

- Two thousand (2,000) football full-season tickets, then University will pay Ticket Solutions a Ten Thousand Dollar (\$10,000.00) bonus in such Contract Year;
- One thousand (1,000) men's basketball full-season tickets, then University will pay Ticket Solutions a Ten Thousand Dollar (\$10,000.00) bonus in such Contract Year; or
- One thousand (1,000) women's basketball full-season tickets, then University will pay Ticket Solutions a Five Thousand Dollar (\$5,000.00) bonus in such Contract Year.

Note: All revenue received by University on a Ticket Solutions Up-sell (as defined hereinafter) shall be apportioned so revenue attributable to new ticket sales (e.g., those above and beyond ticket-quantity sales that would be treated as University Historical Account (as defined hereinafter) sales or Ticket Solutions Renewal Revenue sales) shall be treated as Ticket Solutions New Sales Revenue. Similarly, in the case of a Ticket Solutions Up-sell in the form of a purchase of enhanced-level or premium tickets (e.g., a significantly higher-priced tiered ticket), University will apportion revenue it receives with respect to such purchase so that portion of the premium ticket price representing University incremental revenue (above the price it would have charged for the same-ticred ticket this year) will be treated as Ticket Solutions New Sales Revenue.

By way of illustration only (and, for purposes of this illustration, assuming football full-season ticket prices remain constant), if, the (i) first Contract Year, Ticket Solutions sells a customer four (4) football full-season tickets (at One Hundred Dollars (\$100.00) each), generating revenue

in the first Contract Year totaling Four Hundred Dollars (\$400.00), (ii) second Contract Year, Ticket Solutions (a) renews with such customer (taking overall renewals above the ninety percent (90%) renewal threshold) two (2) football full-season tickets (at One Hundred Dollars (\$100.00) each) and (b) up-sells with such customer (to better locations) the other two (2) football full-season tickets (at Two Hundred Dollars (\$200.00) each), generating revenue totaling Six Hundred Dollars (\$600.00) and (iii) third Contract Year, the customer renews everything at the same rates (taking overall renewals above the ninety percent (90%) renewal threshold) everything at the same rates, generating revenue in the third Contract Year totaling Six Hundred Dollars (\$600.00), then Ticket Solutions will receive commissions as follows:

- In the first Contract Year, thirty-two and one-half percent (32.5%) of Four Hundred Dollars (\$400.00) (Four Hundred Dollars (\$400.00) in revenue generated from new ticket sales), or One-Hundred Thirty Dollars (\$130.00);
- In the second Contract Year, (a) ten percent (10%) of Four Hundred Dollars (\$400.00) (Four Hundred Dollars (\$400.00) in revenue generated from the renewal of four (4) full-season tickets) plus (b) thirty-two and one-half percent (32.5%) of Two Hundred Dollars (\$200.00) (Two Hundred Dollars (\$200.00) in revenue generated from up-selling two (2) of the renewed full-season tickets), or a total of One-Hundred Five Dollars (\$105.00); and
- In the third Contract Year, five percent (10%) of Six Hundred Dollars (\$600.00) (Six Hundred Dollars (\$600.00) in revenue generated from the renewal of four (4) full-season tickets, or a total of Sixty Dollars (\$60.00).

<u>Definitions</u>. The following definitions shall apply for purposes of this Agreement:

"University Athletic Events" shall mean all games, matches or events involving University's football, men's basketball and women's basketball teams, as well as other ticketed activities or events (e.g., concerts, lectures, rallies, etc.) upon which the Parties mutually agree and for which University has the right to sell tickets, including, without limitation, all games, matches or events held at University's home stadiums, arenas or venues.

"Ticket Solutions New Sales Revenue" shall mean revenue (net sales tax) generated for or received by University from all season, partial-plan, group, single-game or any other ticket sales for all University Athletic Events, where ticket sales are arranged, solicited or completed by Ticket Solutions sales representatives. Ticket Solutions New Sales Revenue shall include all ticket-sale transactions where Ticket Solutions sales representatives previously solicited such customers (or members of their households) to purchase tickets to University Athletic Events as reflected in solicitation activities recorded by Ticket Solutions sales representatives in applicable computer databases in the course of performing the Services. For the sake of clarification, Ticket Solutions New Sales Revenue shall not include (i) any portion of revenue attributable to a charitable contribution or donation made by the ticket purchaser, even if made in association with Ticket Solutions New Sales Revenue, (ii) Ticket Solutions Renewal Revenue or (iii) revenue generated and Timely Renewed by University from University Historical Accounts.

"Ticket Solutions Renewal Revenue" shall mean revenue (net sales tax) generated for or received by University during the term of this Agreement from all ticket sales for all University Athletic Events where customers previously purchased from Ticket Solutions sales

representatives the same number of the same type (i.e., same general location) of full-season tickets.

"Ticket Solutions Up-sell" shall mean all ticket sales for all University Athletic Events where (i) ticket sales are arranged, solicited or completed by Ticket Solutions sales representatives, (ii) applicable customers previously purchased tickets for University Athletic Events and (iii) such customers are persuaded to purchase higher-priced tier tickets or greater ticket quantities.

"Timely Renewed" shall mean the status of ticket renewals for University Historical Accounts University sales staff completes within a (i) thirty (30) day grace period following University's applicable renewal deadline each Contract Year for football and (ii) fifteen (15) day grace period following University's applicable renewal deadline each Contract Year for all other sports. For the sake of clarification, if University does not Timely Renew a ticket renewal from a University Historical Account, Ticket Solutions may pursue ticket sales with such account. If Ticket Solutions is successful in such pursuit, then revenue from such sale shall be considered Ticket Solutions New Sales Revenue (not Ticket Solutions Renewal Revenue).

"University Historical Accounts" shall mean all tickets previously sold by University's sales staff.

Additional Terms.

Separate from Ticket Solutions New Sales Revenue and Ticket Solutions Renewal Revenue, in accordance with Exhibit A, University shall be responsible for all ticket-payment processing and other fees associated with the Services, as well as all other expenses (i) specifically associated with the support University agrees to provide under Exhibit A with respect to the Services and (ii) concerning anything additional, including, without limitation, any postage or shipping fees related to ticket delivery.

In the event University undertakes non-revenue producing initiatives or programs for which it desires to engage Ticket Solutions, University will pay Ticket Solutions, for any associated work, an hourly wage upon which the Parties mutually agree.

Settlement on commissionable revenue between the Parties will occur within thirty (30) days of each monthly invoice. University will pay Ticket Solutions within fifteen (15) days of receiving each invoice.

If the Parties fail to reach a new agreement when this Agreement concludes (for whatever reason), for purposes of Ticket Solutions' remaining commissionable revenue calculations, a ticket shall be deemed sold if a customer has paid any portion thereof or made a monetary exchange. Any ticket purchased on a payment plan shall be commissioned at its full face-value amount. For any deposit not yet seated (or requiring further action with the customer contact), the associated ticket shall be deemed fully sold at its non-youth/discounted season-ticket price.



Procurement Contracting & Payment Services One Waterfront Place / 3rd Floor / Don Knotts Blvd PO Box 6024 Morgantown WV 26506

Ph: 304-293-5711

Number:

U18REPLYBUY

Please show this number on all packages and documents related to this Order.

Visit WVU	J PCPS on the inte	rnet: http://pcps.wv	⁄u.edu				Page 1 of 12			
Vendor: ReplyBuy, Inc. 7147 E. Rancho Vista Dr. Suite B29 Scottsdale, AZ 85251	Ship To: West Virginia Un PO Box 0877 Morgantown, W			Invoice To: West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd PO Box 6024 Morgantown WV 26506-6024 Ph: 304-293-5711 Itemize Invoices According to Purchase Order One (1) original invoice required						
Date of Order / Buyer:	Payment Terms:	Ship Via:	Via: FOB: Freight Terms				Delivery Date:			
Sept 13, 2017 M Hrabar	30 Net	Best Way	Destinati	on	TBD		Per Agreement			
AGREEMENT This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University and ReplyBuy, Inc. for: ticket purchases made via mobile phone in response to a text message										
Services beginning	April 20, 2017	and exter	nding throu	gh <u>April 20</u>	<u>), 2020</u>					
All products/services s a part hereof.	hall be provided/	performed in acc	cordance w	ith the standard	d form of a	ıgreem	nent attached hereto as			
Service performed under this Agreement is to be continued in the succeeding fiscal year contingent upon funds being appropriated by te Legistlature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.										
If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work. Total Amount of this Order:										
	Authorized Po	urchasing Agent S	ignature:	1, Qui	JQ.	2				

All CONTRACTS / PURCHASE ORDERS / AGREEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS INCLUDED HEREIN

WVU FOIA #19209 (SUP)-021

REPLYBUY, INC. CLIENT APPLICATION MARKETING AGREEMENT

This Client Application Marketing Agreement (the "Agreement") is entered into effective as of April 20th, 2017 (the "Effective Date") by and between ReplyBuy, Inc., a Delaware corporation ("RB"), and the West Virginia Board of Governors of behalf of West Virginia University and its Department of Intercollegiate Athletics located in Morgantown, West Virginia ("Client").

RB is a technology company owning a mobile sales and marketing platform that is coupled with a back end campaign management and analytics system to help professional and collegiate athletic teams, performing artists, promoters, venues, and other live entertainment organizations effectively engage Client's event patrons ("Patrons") and generate revenue for the Client's live entertainment events. RB's next generation technology, as more fully identified on Schedule A (the "RB Services"), offers Patrons the ability to instantly purchase tickets to live entertainment events, merchandise, memorabilia, and other offerings or services with a simple "reply" text message. Client is a live entertainment organization that wishes to enter into a business relationship with RB with respect to the RB Services, in order to market the availability of tickets (and other goods and services) for purchase through the RB Platform to its Patrons.

This Agreement consists of this signature page, the Terms and Conditions, beginning below, and those Schedules attached hereto. If there is a conflict between the terms and conditions of this Agreement and those of any Schedule, the terms and conditions of this Agreement control over those of the Schedule.

As more fully detailed in Section 10(g), this Agreement represents the entire understanding between the parties hereto with respect to the subject matter set forth herein.

For purposes of Section 10(d) of this Agreement, the initial contact information of each party is as follows:

ReplyBuy, Inc. 7147 E. Rancho Vista Dr. Suite B29 Scottsdale, AZ. 85251 West Virginia University
P.O. Box 0877

Morgantown, WV 26507

Attention: Josh Manley Email: josh@replybuv.com

RB: ReplyBuy, Inc.

Title: CEO

Attention: Matt Wells
Email: wmwells@mail.wvu.edu

IN WITNESS WHEREOF, RB and Client have caused this Agreement to be executed by their respective, duly authorized officers or representatives, effective as of the Effective Date.

By:	Joshua P. Manley	
, <u> </u>	•	

Client: West Virginia University Board of Governors on behalf of West Virginia University

(Print name): Joshua P. Manley

(Print name): Margo Hrabar

Title: Category Manager

TERMS AND CONDITIONS

- <u>Duties of RB and Client</u>. RB and Client each agree to undertake and fulfill the duties and obligations set forth on <u>Schedule A</u> hereto. Capitalized terms used in this Agreement are defined herein or on <u>Schedule A</u>.
- 2. <u>Exclusivity</u>. The parties hereby agree that during this Agreement, RB will be Client's exclusive provider for ticket purchases made via mobile phone in response to a text message.
- 3. Fees and Payment.
- (a) Pricing. The pricing for the applicable RB Services is set forth in and will be calculated in accordance with Schedule A.
- (b) Payment. Within thirty (30) days of the end of each month during the Term, RB agrees to pay Client (via check), the aggregate net sales revenue proceeds after expenses and fees have been deducted from the Gross Revenue produced in the previous calendar month from transactions completed utilizing the "RB Platform" referred herein as "Client Proceeds" (defined on Schedule A) owed to Client. All payments made under this Agreement shall be in United States dollars. The payments under this Section are net amounts to be received by the applicable party, exclusive of all taxes, duties, sales taxes, value added taxes, assessments, and similar taxes and duties, and, except as otherwise provided herein, are not subject to offset or reduction because of any costs, expenses, taxes, duties, assessments, or liabilities incurred by the other party or imposed on a party in the performance of this Agreement or otherwise due as a result of this Agreement. Notwithstanding the foregoing, each party shall be responsible for the payment of any and all of its own income taxes and income tax withholding. Client shall remit to the proper authorities all sales tax owed in connection with the RB Services sold to Patrons.
- 4. <u>Term and Termination</u>.
- (a) Term. This Agreement shall be in effect as of the Effective Date and, unless terminated in accordance with this Section, will continue in effect until April 20th, 2020 (the "Initial Term"). Following the Initial Term, the Agreement shall have the option to renew for additional successive twelve (12) month terms (each a "Renewal Term"), upon mutually written agreement by both parties. The Initial Term and any Renewal Term are referred to collectively herein as the "Term."
- (b) Termination. Either party may terminate this Agreement upon the material breach by the other party of this Agreement, which breach is not cured within 30 days of the date of written notice thereof. Client reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice to RB. Upon receipt of such notice, the Vendor shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by RB in performing this Agreement, whether completed or in progress.
- (c) Other Termination. RB's agreement with Paciolan, LLC enables RB to sell primary ticketing inventory for mutual clients via a mobile phone text message exchange (the "Paciolan Agreement"). If the Paciolan Agreement terminates, RB will give written notice to Client. If Client is an exclusive customer of Paciolan, LLC at the time of termination for ticketing, then this Agreement will terminate as it relates to ticketing, donations and parking, which termination will be effective two months after the date of termination of the Paciolan Agreement
- (d) <u>Survival</u>. In addition to those Sections of this Agreement that survive expiration or termination of this Agreement by their express terms, Sections 6 through 10 shall survive the expiration or termination of this Agreement in perpetuity or to the maximum extent permitted by applicable law.
- 5. Representations and Warranties.
- (a) Each party hereby represents and warrants to the other that it:
 - i has authorized the person who is signing this Agreement for such party to execute and deliver this Agreement; and
 - ii has the power and authority to enter into this Agreement, and to grant the rights and licenses and to perform its obligations hereunder.
- (b) EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTIES, AND EACH PARTY HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS UNDER THE UCC.
- 6. <u>Limitation of Liability; Indemnification</u>.
- (a) EXCEPT FOR CLAIMS FOR INDEMNIFICATION MADE UNDER SECTIONS 6(C) AND 6(D) BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY COST OF COVER, LOST PROFITS, LOSS OF REVENUE, OR ANY FORM OF SPECIAL INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND (WHETHER OR NOT FORERBEABLE) ARISING OUT OF, UNDER OR RELATING TO THIS AGREEMENT, WHETHER BASED ON A BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY IS

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INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ACTS OR OMISSIONS INVOLVING INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.

- (b) RB will defend Client, its parent company and their affiliates harmless from any claim, cause of action, suit or proceeding by a third party, and indemnify and hold them harmless from any resulting loss, expense (including reasonable out-of-pocket attorneys' fees and court costs), damage or liability, alleging that the "RB Offerings" (defined below), or the use thereof, infringes any patent, copyright, trade secret or any proprietary rights of any third party.
- (c) Client agrees that it shall be responsible for all demands, claims, damages to persons and/or property, losses or liabilities, including reasonable attorney fees arising out of or caused by Client's negligence or intentional misconduct, if assessed by a court of competent jurisdiction to be the responsibility of Client. The following procedures will be followed in connection with any claim for indemnification hereunder (provided that it is understood that failure to follow these procedures will not limit an indemnifying party's obligation to provide indemnification, except to the extent that failure to follow such procedures materially prejudices the indemnifying party's ability to defend against a claim for which indemnification is sought):
 - The indemnified party will promptly inform the indemnifying party in writing of any such claim, demand or suit and the indemnified party will reasonably cooperate in the defense thereof at the indemnified party's expense;
 - ii Subject to Section 6(e)(iii) below, the indemnified party will give the indemnifying party sole control of the defense and all related settlement negotiations and reasonable assistance; and
 - The indemnified party will not agree to the settlement of any such claim, demand or suit prior to a final judgment thereon without the consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed and will not agree to the settlement of any such claim, demand or suit unless such settlement provides for the complete and unconditional release of the indemnified party, without the prior written consent of the indemnified party.
- 7. Proprietary Rights. RB and Client shall retain any and all right, title, and interest in and to each party's respective intellectual property of any nature (including, but not limited to, trade secrets, copyrights, and trademarks), unless otherwise agreed by RB and Client in writing. Without limiting the foregoing, each party shall retain all right, title, and interest to any pre-existing data or independently created list of customers and any data or list created or obtained by each party through performance under this Agreement.

8. <u>Licenses</u>.

- During the Term, RB and Client each hereby grants to the other a non-exclusive, royalty-free license, to use the other's business name and any images, logos, trade names, trademarks, or service marks as may be necessary to fulfill their obligations and perform this Agreement (referred to collectively herein as the "Marks"). Without limitation, RB may use Client's Marks on its website and in its advertising and marketing materials to show prospective patrons that Client participates in the RB Service. Each use of the Marks by the other party shall be subject to prior approval and either party hereto shall have the right to reasonably object to the other party's use of its Marks and to reasonably direct the use of its Marks on the RB Application (defined below) or any web site controlled by the other party. Approval requests for each use of Client's Marks must be sent to trademarklicensing@mail.wvu.edu. Review and approval of such requests shall not be unreasonably withheld or delayed. Each of RB and Client will retain all goodwill and all other rights in connection with their respective Marks. Neither RB nor Client will obtain any rights in the other's Marks as a result of their use of the other's Marks.
- (b) In each case where any Marks appear, appropriate notices shall indicate that such Marks are the trademarks of the respective parties. A party's use of the other party's Marks shall be in compliance with such other parties' trademark usage guidelines, as amended from time to time, a copy of which will be provided to such party following the execution of this Agreement. Such party is the sole and exclusive owner of such party's Marks. Except as prohibited by law, the parties shall do nothing inconsistent with such ownership, either during the Term or afterwards. A party's use of the other party's Marks shall inure to the benefit of and be on behalf of the other party. Such party's utilization of the other party's Marks will not create any right, title or interest in such other party's Marks.
- (c) RB hereby grants Client a license to use the administrative portion of the RB Platform via the Internet for purpose for conducting campaigns of sales of tickets and goods and services to prospective Patrons. Client shall not directly or indirectly reverse engineer, decompile or disassemble the software used to provide the RB Platform.

9. Confidentiality.

(a) Each party acknowledges that, in the course of their relationship, they will receive, work with and be exposed to certain non-public information concerning the business of the other party and its affiliates that the receiving party knows or reasonably should know is confidential to the disclosing party, whether or not reduced to writing, including, without limitation, information and knowledge pertaining to the RB Offerings, accounting data, and other proprietary information relating to the business of Client and RB (collectively, the "Confidential Information"). The terms and conditions (including the pricing and percentages) are Confidential Information of both parties. Each party agrees to use the same measures to protect the other party's Confidential Information as it takes to protect its own Confidential Information, but in no event less than reasonable care under the circumstances.

- (b) The following information shall not be subject to the confidentiality restrictions set forth in this Section 9: (i) information that the receiving party can show was already known to it or in its possession at the time of disclosure and was not acquired, directly or indirectly, from the disclosing party or from a third party under a continuing obligation of confidence to the disclosing party; (ii) information which is now or subsequently becomes known or available to the public or in the trade by publication, commercial use or otherwise through no act or fault on the part of the receiving party; (iii) information which the receiving party independently develops without use of or reference to the disclosing party's Confidential Information; and (iv) information which is provided to any third party free of confidentiality obligations or is approved by the disclosing party for disclosure. A disclosure where which is required to disclose in response to a valid court order or otherwise required to be disclosed by law is not a violation of this Agreement, but only if the receiving party gives the disclosing party prompt written notice of the potential for such disclosure and provides it with the opportunity to seek a protective order or obtain other relief to preserve the confidentiality of the Confidential Information.
- (c) With regard to Confidential Information that the recipient knows or reasonably should know constitutes a trade secret under applicable law, the obligations in this Section shall continue for so long as such information constitutes a trade secret. With regard to all other Confidential Information, the obligations in this Section 9 shall continue for the Term and for a period of four (4) years thereafter.
- (d) A party may disclose information concerning this Agreement and the transactions contemplated hereby, including providing a copy of this Agreement, in confidence to any or all of the following: potential acquirers, merger partners, investors (including general partners), lenders, financing sources, and their personnel, attorneys, auditors and investment bankers, in connection with the due diligence review of such party by persons; and to the party's outside accountants, legal counsel, auditors and other profession advisors and persons with a bona fide need to know. A party may also disclose this Agreement in connection with any litigation or legal action concerning this Agreement.
- 10. General.
- (a) Assignment. Neither party may transfer or assign its rights under this Agreement without the prior written consent of the other party hereto, except that a party may assign this Agreement to an affiliate or upon a Change of Control; provided, that Client may assign this Agreement to a successor board, commission or agency of the State of West Virginia in the event of a change in law by the West Virginia Legislature changing the governing body of Client upon thirty (30) days' advance written notice to RB. For purposes of this Agreement, a "Change of Control" means a sale of all or substantially all of the assets of a party or the transfer of a controlling interest in the voting stock of a party. Subject to the foregoing, the rights and obligations of the parties will bind and inure to the benefit of their respective successors and assigns. Any purported assignment in violation of this paragraph is void.
- (b) <u>Delay</u>. Neither party will be liable to the other party for any failure nor delay in performance caused by reasons beyond such party's reasonable control, and any such failure or delay will not constitute a breach of this Agreement.
- (c) <u>Expenses</u>. Except as otherwise noted, each party to this Agreement will bear its own expenses in connection with fulfilling its obligations under this Agreement.
- (d) Notices. Any notices under this Agreement shall be delivered by nationally-recognized express delivery services, or certified or registered mail, return receipt requested, to the address of the respective party set forth on the signature page to this Agreement, or such other address as a party may subsequently specify in writing. Notice by email will be deemed received effective upon receipt where acknowledged by recipient (other than email auto replies). Notice by express delivery will be deemed received effective upon delivery. Notice by certified or registered mail will be deemed received effective on the date signed for or rejected by addressee.
- (e) <u>Nature of Relationship</u>. Neither this Agreement nor the parties' business relationship established hereunder will be construed as a partnership, joint venture or agency relationship, or as granting any franchise.
- (f) Waiver. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.
- (g) <u>Entire Agreement</u>. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications and understandings (both written and verbal) regarding such subject matter.
- (h) Equitable Relief. Each of the parties hereto acknowledges that violation of any of Sections 7, 8 or 9 hereof may cause irreparable injury to the other party, and that such violation may not be capable of remedy by money damages or other remedy at law. Each party shall therefore accordingly have the right to seek injunctive and equitable relief to restrain any improper disclosure or use (or any attempted or intended disclosure or use) in any court of competent jurisdiction, without the necessity of either party posting any bond in such proceeding, any such bond requirement being hereby waived by the parties hereto. The parties hereto acknowledge that they have relied on the provisions hereof in making their decision to disclose the confidential information hereunder and that neither party would have made such disclosures unless entitled to the protection of this provision.
- (i) <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

(j)	Governing Law; Venue. The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement, without giving effect to any principles that may provide for the application of the laws of another jurisdiction. All disputes arising out of related to this Agreement shall be filed by Vendor in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.								

Schedule A

To

Client Application Marketing Agreement

1. The RB Offerings.

During the Term, RB will provide the "RB Offerings" which are collectively (a) the RB Platform and (b) one or more of the RB Services delivered to Patrons for and on behalf of the Client.

2. The RB Platform.

RB will deliver a proprietary sales and marketing platform that is coupled with a back end campaign management and analytics system to help Client maximize unsold inventory opportunities and effectively engage Client's event patrons ("Patrons") to increase revenue for the Client's live entertainment events. Through the RB Services, Client will be able to directly engage Patrons by providing the ability to instantly purchase tickets to live entertainment events, merchandise, memorabilia, and other offerings or services with a simple "reply" text message. RB Services in connection with the RB Platform will include:

- (a) License(s): three (3) administrative licenses to be provided to Client
- (b) Campaign management dashboard: Full access
- (c) Patron database: CRM upload access granted
- (d) Reporting: Analytics & campaign tracking (see Section 3 of this Schedule A for further detail)
- (e) Managed Services: Includes up to eight (8) hours per month of campaign creation, strategy and dedicated account resources

3. RB Services.

During the Term, RB will deliver the following RB Services to Patrons through the RB Platform (collectively, the "RB Services"):

Participating Patrons will opt into receiving communications from RB and then RB will notify them when offers are available. Participating Patrons can then purchase through the RB Platform the following types of products and services from Client, at Client's sole discretion:

- (a) Event tickets
- (b) Merchandise
- (c) Redeemable Vouchers

RB is responsible for, among other things, the following: (a) sending communications to Patrons about the availability of tickets to the game; (b) collecting payment from Patrons for purchased tickets; and (c) distributing the Client Proceeds.

Fees and Expenses.

Client shall pay to RB for the applicable RB Services delivered by RB to Patrons the fees set forth in this Section 4 of this <u>Schedule A</u> which such fees shall be calculated as follows:

- (a) Consulting Fees are generally billed hourly at the rate of \$250.00 per hour for services including graphics or creative design, onsite training (minimum of eight (8) hours), and phone consultation with respect to the RB Offerings. They have been waived for this Agreement.
- (b) "Gross Sales Receipts" means the Gross Sales Revenue minus the Service Fees.
- (c) "Messaging Fees" means the rates associated with sending each outbound SMS Text Message and Client acknowledges and accepts that SMS text messages may consist of Concatenated Messages, which is defined as messages that are linked together in a chain or series. Messaging Fees for Concatenated Messages will be charged based on the number of messages required multiplied by the Messaging Rates listed below in Section 4 (c) of Schedule A of this Agreement.

- (d) "Messaging Rates" means the rate of \$0.02 per SMS Text Message sent to be paid by Client only for Outbound SMS Messages. There is no charge for inbound messages received. Client shall only be charged for Outbound SMS Messages.
- (e) The "Monthly Platform Fee" means the monthly rate paid by Client to RB for the use of and access to the RB Platform. These fees shall be paid monthly on a reoccurring charge via Clients credit card that they designate for payment. For the Term of this Agreement, the Monthly Platform Fee shall be defined in this Section 4 (d) of this Schedule A as listed below.
 - (i) YEAR 1: \$[__0] Per Month (Months 1 12 from the Execution Date of this Agreement)
- (f) "Pre-Agreed Travel Expenses" means expenses that RB may incur during the course of travel of one or more RB employees to meet with Client at the Clients request for the purposes of onsite training, consulting, or otherwise. At the Clients request, RB will travel to and from Clients place of business or otherwise and Client agrees to reimburse RB for all related airfare, lodging or hotel expenses, rental car or other ground transportation expenses, and other similarly related expenses associated with business travel in RB's performance of Clients request. In advance of any travel reservations that shall incur an immediate cost, RB will inform Client of the estimated cost and obtain approval from Client prior to booking travel. This has been waived for this Agreement and RB will cover the costs.
- (g) "Processing Fees" means the costs associated with processing each credit card transaction from a Patron in connection with the RB Platform for Client's tickets (and other goods and services) and shall be deducted from Client's Gross Sales Revenue on a per transaction basis. This rate may change from time-to-time with the current Processing Fee being defined at the rate of 3% of the total US Dollar amount being processed for each transaction.
- (h) "RB Deductions" means the sum of the Processing Fees, the Service Fees, and the Sales Transaction Revenue Share plus the Total Messaging Charge.
- (i) "Sales Transaction Revenue Share" means the percentage of each Patron's transactions Gross Sales Receipts (USD \$) value that shall be retained by RB for each transaction generated on the RB Platform after Processing Fees have been deducted from the Gross Sales Revenue. For the purposes of this Agreement, the Sales Transaction Revenue Share shall be defined as twenty-three percent (23%) of the Gross Sales Receipts.
- (j) "Service Fees" means the costs added to the ticket price for each campaign and shall be defined at the rate of \$2.00 \$6.00 per ticket based on the price of the ticket. (i.e. \$60 ticket is presented to the fan as \$64)
 - (i) Under \$50 \$2 fee
 - (ii) \$50-\$100 \$4 fee
 - (iii) Above \$100 \$6 fee
- (k) "Total Messaging Charge" means the product of the Messaging Rate and the number of Outbound SMS Messages.

Calculation of Client Proceeds, Schedule of Payment, and Payment Method.

- (a) "Client Proceeds" means the net revenue dollar (USD \$) value that RB shall remit to Client after all fees, costs, and related expenses have been deducted from the total gross revenue generated from Clients account in the prior calendar month. For the purposes of this Agreement, the Client Proceeds shall be calculated as shown below.
 - (i) Step 1: \$ Gross Sales Revenue minus the RB Deductions = \$ Net Sales Revenue
 - (ii) Step 2: \$ Net Sales Revenue = \$ Client Proceeds per calendar month
- (b) "Schedule of Payment" means the frequency with which RB shall make payment to the Client the Client Proceeds owed from sales generated utilizing the RB Platform. For the purposes of this Agreement, RB shall make regular calendar monthly payments to the Client of all Client Proceeds owed for sales generated, processed, and fully settled one (1) calendar month in arrears.
- (c) "Payment Method" means the method used by RB to make payment to Client any Client Proceeds owed to Client by RB as are set forth in Section 3(b) of this Agreement and herein this Section 5(c) of this Schedule A of this Agreement. For the purposes of this Agreement the Payment Method shall be by check.

6. **General Obligations**

(a) RB and Client acknowledge and agree to work together on the following items in connection with the performance of their respective obligations under this Agreement (herein referred to as "General Obligations").

- (i) Number of Monthly Campaigns:
 - (1) Number of Minimum Campaigns: Send campaign for seventy-five percent (75%) of regular season home football and men's basketball games. More upon request.
- (ii) Email activations:
 - (1) Work with Client to identify prospective Client Patrons as prospective targets for the RB Services for each specified Client property (as identified on the signature page of this Agreement).
 - (2) Patrons will receive a customized email invitation sent by Client to activate and participate in the RB Services, with Patrons being identified for each specific Client property.
 - (3) RB will build a customized landing page for Patrons to confirm their information.
 - (4) RB will measure and track Patron engagement and report back to Client following each email deployment. Such reports shall be provided to Client in RB's standard format.
 - (5) RB will help to supply the "activation" messaging to be sent to Patrons and will submit such messaging to Client for approval.
 - (6) Messaging frequency to non-opted in fan base will occur every 60 90 days.
 - (7) Client will encourage registration with the RB Services as part of Client's onboarding process for new fans.
- (iii) <u>Social Media:</u> Client agrees to promote the RB Services or campaigns they choose to conduct i- on the Client's social media pages in the following minimum level of frequency or occurrence.
 - (1) Facebook: 2 times per season.
 - (2) Twitter: 2 times per season.
 - (3) Instagram: 2 times per season.
- (iv) In-Venue Awareness: Client and RB agree to work collectively in good faith to generate Patron awareness of the RB Services utilizing the following "In-Venue" mediums.
 - (1) Over Air Announcements
 - (2) Signup to win contests
- (v) <u>In-App:</u> Client and RB agree to work collectively to make the registering for the RB Services an option within Client's existing iOS and Android applications (if applicable).
- (vi) Press Release: Both Client and RB agree to issue up to two (2) press releases announcing or discussing the RB Services for Patrons. However, before any public announcement is released both Client and RB agree that any and all content contained in the announcement will be mutually agreed upon.
- (b) <u>Accessible Seating</u>: Client agrees to accommodate Patrons who request accessible seating if tickets for accessible seating are available.

RF No.	

STATE OF WEST VIRGINIA

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE: Vendor's Name: 9/12/1 Date: Authorized Signature: State of HY to-wit: Joshua Manuy Taken, subscribed, and sworn to before me this 2 day of September My Commission expires NOTARY PUBLIC AFFIX SEAL HERE Jamle Crews asing Affidavit (Revised 07/01/2012) **Notary Public** Maricopa County, Arizona My Comm. Expires 12-31-2020

Wes	t Virgi	nia U	Iniversity	FY	Buyer	Date	Acct#		P. O Date	Order#	
_Purch	ase Cha	inge R	Request			70000				U14TICK	ETRETURN
Docum	Requisition Regular Pu Contract P	rchase (urchase Contract			Cancella Increase	Decrease Balance(\$25.00 Maximu		Error in T	8/19/2013 Total Amount of Account of Vendor Name/Address		
Vendor Name, Address, FEIN, Phone # Ticket Return, LLC d/b/a Ticket Return Mattews, NC 28105							Spending Unit West Virginia I Procurement, (One Waterfron PO Box 6024 Morgantown, V	Jniversity Contracti t Place	ng, & Payment Services		
ttem#	Quantity	Unit M				Descr	ription			Unit Price	Extended Price
			Change Order #2 PLEASE AMEND THE CONTRACT AS FOLLOWS: To renew open end contract U14TICKETRETURN, for another one (1) year term according to all the terms and conditions contained in the original contract and subsequent change orders. Renewal Period: July 1, 2019 - June 30, 2020 Effective Date: July 1, 2019 To furnish the following: Student Ticketing Services								
Reason 1 Contract								Previous Increase Decreas New Total	3	\$	Open End Open End
Funding Paragraph Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this								7/30/19	Date		



Purchasing, Contracts and Payment Services

June 27, 2019

TicketReturn, LLC d/b/a Ticket Return 1150 E Crews Road Mattews, NC 28105

Subject: West Virginia University Contract U14TICKETRETURN

To Whom It May Concern,

Your open-end contract with WVU, U14TICKETRETURN, for Student Ticketing Services, expires on June 30, 2019. In accordance with the terms and conditions of this agreement, this contract if mutually agreed between both parties, may renew for another one (1) year term.

At this time, WVU wishes to pursue the option for renewal for the period July 1, 2019 through June 30, 2020. If you agree to renew at the same terms and conditions and prices, you may sign the acknowledgment below and return this letter to me with a copy of your Certificate of General Liability Insurance Coverage, a completed Purchasing Affidavit, and signed Acknowledgement of Rule 1.7. Should you require any changes, you must clearly indicate those to me in writing under separate cover for consideration.

If you have any questions, you may call me at 304-293-8472 or email sara.harvey@mail.wvu.edu.

Sincerely,

Sara Harvey Category Analyst

I agree with the foregoing request for renewal of contract.				
FIRM: Ticket Return, LLC (Please complete all information)				
BY: RLEROY DESTON TA (Printed Name) (Signature)	(Address) (Address) (HARLOTTE JC 28224 (City) (State) (Zip)			
DATE: 07/12/2019	7.54.618-4284 (Phone)			
(E-mail address)	803-748-2518 (Fax)			

Phone: 304-293-5711 PO

One Waterfront Place, 3rd Floor PO Box 6024

Fax: 304-293-8152

Morgantown WV 26506-6024

STATE OF WEST VIRGINIA Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

WITNESS THE FOLLOWING SIGNATURE:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

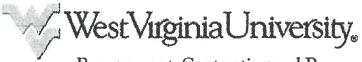
"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

Vendor's Name: // CK CRETURN CC Authorized Signature: Determine Date: 07/12/2019 State of South Carolina County of York to-wit: Taken, subscribed, and sworn to before me this 2 day of July , 20 9. My Commission expires Dec. 20 20.

Purchasing Affidavit (Revised 01/19/2018)



Procurement, Contracting and Payment Services

ACKNOWLEDGMENT OF RULE 1.7 CHILD PROTECTION

Rule 1.7 Child Protection contains important information about West Virginia University's commitment to providing protection of children on the University's premises or involved in University sponsored programs at all geographic locations by providing guidance on reporting requirements for Child Abuse and/or Neglect; providing guidelines for appropriate supervision of children; and ensuring that the University complies with all federal and state laws and regulations regarding the employment of children. (BOG Rule 1.7; 1.1)

By signing below, I am acknowledging that I have access to the Board of Governors Governance Rule 1.7 Rule On Child Protection, http://bog.wvu.edu/policies, will abide by it, and will report any incidents of child abuse or neglect to the University's Title IX Coordinator, 304-293-5600, http://titleix.wvu.edu/. I understand I am a "Member of the University Community" (BOG Rule 1.7; 6.7) and have every responsibility to uphold the Board of Governors Governance Rule 1.7 Child Protection to ensure the safety of our youth.

If you have any questions regarding BOG Rule 1.7 Child Protection, please contact: Cortney Simmons

Educational Outreach Specialist Division of Diversity, Equity, and Inclusion

childrenoncampus@mail.wvu.edu

Company Name	704 - 618 - 4: Phone Number
Signature Signature	07/12/2019 Date
Print Name	
TRAIDENT	

Phone: 304-293-5711 Fax: 304-293-7193

Title

One Waterfront Place, 3rd Floor PO Box 6024 Morgantown WV 26506-6024



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/29/2019 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). CONTACT Jodi Hartsell PHONE (704) 888-3232 FAX (A/C, Noi: (704) 888-8424 Colonial Insurance Services ADDRESS: jhartsell@insidecolonial.com 4285 Hwy 24 27 East PO Box 170 INSURER(S) AFFORDING COVERAGE Midland NC 28107-0170 Hartford Casualty Insurance Company 29424 INSURER A: INSURED INSURER B : Hartford 00914 Ticket Return, LLC Hanover Excess & Surplus INSURER C : PO Box 241632 INSURER D : INSURER E : NC 28224 Charlotte INSURER F: CL1891306691 COVERAGES CERTIFICATE NUMBER: **REVISION NUMBER:** THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. ADDLISUBR TYPE OF INSURANCE POLICY NUMBER **COMMERCIAL GENERAL LIABILITY** 1,000,000 EACH OCCURRENCE DAMAGE TO RENTED 300,000 CLAIMS-MADE X OCCUR PREMISES (Ea occurrence) 10,000 MED EXP (Any one person) 1.000,000 22SBAVI6739 09/14/2018 09/14/2019 \$ PERSONAL & ADV INJURY \$ 2,000,000 GEN'LAGGREGATE LIMIT APPLIES PER: GENERAL AGGREGATE 2,000,000 X POLICY s PRODUCTS - COMP/OP AGG OTHER: COMBINED SINGLE LIMIT s 1,000,000 AUTOMOBILE LIABILITY ANY AUTO RODEY INJERY (Per person) 2 OWNED AUTOS ONLY HIRED SCHEDULED 22\$BAVI6739 09/14/2018 09/14/2019 BODILY INJURY (Per accident) AUTOS NON-OWNED PROPERTY DAMAGE (Per accident) AUTOS ONLY AUTOS ONLY X UMBRELLA LIAB 1.000.000 M OCCUR **EACH OCCURRENCE** 1,000,000 EXCESS LIAB 22SBAVI6739 09/14/2018 09/14/2019 AGGREGATE DED RETENTION \$ 10,000 X PER STATUTE AND EMPLOYERS' LIABILITY 1,000,000 ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) E.L. EACH ACCIDENT 22WECLB9037 09/14/2018 09/14/2019 1,000,000 E.L. DISEASE - EA EMPLOYÉE if yes, describe under DESCRIPTION OF OPERATIONS below 1,000,000 E.L. DISEASE - POLICY LIMIT Per Aggregate \$3,000,000 Professional Liability \$3,000,000 C P-001-000036015-01 09/24/2018 09/24/2019 Per Occurrence DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) CANCELLATION CERTIFICATE HOLDER SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. West Virginia University One Waterfront Place AUTHORIZED REPRESENTATIVE

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3rd Floor

Morgantown

WV 26506-6024

West Virginia University	FY Buyer	Date	Acct#	P. O Date	Order #	
Purchase Change Request	17 N	7/1/2016	VARIOUS	8/19/2013	U14TICKETRETURN	
Document Requisition (Cancellation Only) Regular Purchase Order Contract Purchase Order Copen End Contract Purchase Order Agreement Requisition (Cancellation Only) Regular Purchase Order Contract Purchase Order Contract Purchase Order X Open End Contract Purchase Order Agreement Requisition (Cancellation Only) Cancellation Increase/Decrease Unused Balance(\$25.00 Maximum) Change of Vendor Name/ Address Change of Vendor Name/ Address Other Vendor Name, Address, FEIN, Phone Spending Unit Name & Address						
TicketReturn, LLC d/b/a Ticket Return 1150-E Crews Road Mattews, NC 28105 West Virginia University Athletic Department PO Box 0877 Morgantown WV, 26506				,		
Item# Quantity Unit M	Description					Extended Price
Change Order #1 PLEASE AMEND THE CONTRACT AS FOLLOWS: Renew Open End Contract U14TICKETRETURN, originally effective July 1, 2013 for three (3) aditional years according to all terms and conditions contained in the original contract RENEWAL PERIOD: July 1, 2016 - June 30, 2019 EFFECTIVE DATE: July 1, 2016						
Reason for Change: Renewal of Contract			Previou Increas Decrea	se	\$	Open End Open End
			INGW 10	vicii		орон сни
Funding Paragraph Service performed under this contract fiscal year contingent upon funds bein this service. In the event funds are no contract becomes of no effect and is not service.	appropriated by appropriated for	the Legislature for this service, this	Robert A	. Beck	7/1/16	Date

Approved

Procurement Officer



June 29, 2016

TicketReturn, LLC d/b/a Ticket Return 1150 E Crews Road Mattews, NC 28105

Subject: West Virginia University Contract U14TICKETRETURN

To Whom It May Concern:

Your open-end contract with WVU, U14TICKETRETURN, for Student Ticketing Services, expires on June 30, 2016. In accordance with the terms and conditions of this agreement, this contract, if mutually agreed between both parties, may be renewed for another three (3) year term.

At this time, WVU wishes to pursue the option for renewal for the period July 1, 2016 through June 30, 2019. If you agree to renew at the same terms and conditions and prices as previously authorized, you may sign the acknowledgement below and return this letter to me. Should you require any changes, you must clearly indicate those to me in writing under separate cover for consideration.

To complete a renewal of the contract, you must also provide to me, with your acknowledgement, the completed attached Purchasing Affidavit.

If you have any questions, you may call me at 304-293-8472 or email kosepesky@mail.wvu.edu.

Sincerely,

Kolby Sepesky Category Analyst

IRM: TicketReturn, LLC	(Please complete all information)
Y: RLEROY DENTOS JA (Printed Planne)	7080x 241632 (Address)
(Signature)	CHARLOTTE DC 28224 (City) (State) (Zip)
ATE: <u>(-30-2016</u>	704-618-4284 (Phone)
LDESTON & TICKETRETURN, COT	(Fax)

Phone: 304-293-5711 One Waterfront Place, 3rd Floor PO Box 6024 Morgantown WV 26506-6024

STATE OF WEST VIRGINIA **Purchasing Division**

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Date: 4 - 3 a - 20 / 6
1 June , 20/6
NOTARY PUBLIC &. Calle next son
Purchasing Affidavit (Revised 08/01/2015)
WVU FOIA #19209 (SUP)-038



Procurement, Contracting & Payment Services One Waterfront Place / 3rd Floor / Don Knotts Blvd PO Box 6024 Morgantown WV 26506 Ph: 304-293-5711

Visit WVU PCPS on the internet: http://pcps.wvu.edu

Number:

U14TICKETRETURN

Please show this number on all packages and documents related to this Order.

Page 1 of 19

Vendor: TicketReturn, LLC d/bla Ticket Return 1150-E Crews Road Mattews, NC 28105 Ship To: West Virginia University Athletic Department ATTN: Matt Wells PO Box 0877 Morgantown, WV 26506 (304) 293-3088			One Waterfront P PO Box 6024 Morgantown WV 2 Ph: 304-293-571		
Date of Order / Buyer: August 19, 2013	Payment Terms: 30 Net	Shîp Via: N/A	FOB:	Freight Terms:	Delivery Date: Per Agreement
T. Collins	JO NEI	I NA	NIA	N/A	rei Agreement

AGREEMENT

This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University and TicketReturn, LLC d/b/a TicketReturn

Student Ticketing Services.

July 1, 2013 Services beginning

and extending through

June 30, 2016

All services shall be performed in accordance with the standard form of agreement attached hereto as a part hereof.

If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work.

Total Amount

of this Order:

\$ Open-End

Authorized Purchasing Agent Signature:

WVU FOIA #19209 (SUP)-039

TICKETRETURN SOFTWARE USERS AGREEMENT

This TICKETRETURN SOFTWARE USERS AGREEMENT (the "Agreement") is effective as of July 1, 2013 between TicketReturn, LLC, with principal offices at 1150-E Crews Road, Matthews, NC 28105, d/b/a TicketReturn ("TicketReturn"), and the West Virginia University Board of Governors on behalf of West Virginia University, a public agency and instrumentality of the State of West Virginia, with its main campus located in Morgantown, West Virginia ("Customer").

WHEREAS, Customer offers tickets for its venues and events at those venues;

WHEREAS, TicketReturn is in the business of offering software which facilitates the sale and delivery of tickets for events and venues and tracking attendance at such events and venues;

WHEREAS, Customer desires to enhance its processes for distributing tickets and tracking attendance at events and venues;

NOW THEREFORE, in consideration of the foregoing and of the mutual promises, covenants, representations, warranties and agreements herein, and intending to be legally bound, TicketReturn and Customer hereby agree as follows:

1. **DEFINITIONS.**

- 1.1 The following capitalized terms shall have the meanings set forth below for all purposes of this Agreement:
 - 1.1.1 <u>Event(s)</u>. Any public or private gathering which employs issuance of paid or unpaid tickets as a means of controlling admission to or accounting for entry to a Licensed Venue (as such term is defined below) owned, operated, managed or served by Customer.
 - 1.1.2 Licensed Venue(s): Milan Puskar Stadium and WVU Coliseum.
 - 1.1.3 <u>Documentation</u>. All electronic manuals necessary for training of Customer's personnel in the operation and maintenance of the Licensed Programs (as such term is defined below), except for the source code or source code documentation.
 - 1.1.4 <u>Licensed Programs</u>. All TicketReturn software and database products and their components, as listed in <u>Schedule A</u>, including, without limitation, subsequent upgrades, revisions and corrections. For the avoidance of doubt, Licensed Programs and databases do not include source code or Microsoft or other third-party end-user licenses.
 - 1.1.5 <u>Non-Licensed Programs</u>. Any Customer or third-party software that is (a) not authored, owned, licensed, or supported by TicketReturn.
 - 1.1.6 <u>Customer Equipment</u>. The equipment, devices and supporting third-party software identified in this Agreement and in <u>Schedule B</u> attached hereto, which are provided and supported by Customer for the purpose of enabling Customer to utilize the Licensed Programs, including but not limited to the following definitions.
 - 1.1.6.1 <u>Ticket Network.</u> Customer's Local Area Network (LAN) and Wide Area Network (WAN) environment, including, but not limited to, Customer's on-site intranet services, Internet Service Provider (ISP), LAN/WAN Internet Information Services (IIS); and LAN subnets, if present, all of which may be configured and employed by Customer to support the operation and delivery of the Licensed Programs.

- 1.1.6.2 <u>Ticket Server(s)</u>. The network computer server or servers where the Licensed Programs and Customer database reside.
 - 1.1.6.2.1 Site-Based Service. Ticket Server(s) are installed at Customer's Venue. Customer owns and supports the Ticket Server(s) and related hardware or third-party software. Customer's Internet service provides access to online ticket sales, TicketReturn software upgrades, and remote support or training offered by TicketReturn. In the event of Internet service disruption, Customer's access to the Licensed Programs and database are supported by Customer's Local Area Network (LAN); online ticket sales are suspended until Internet service is restored.
 - 1.1.6.2.2 <u>Hosted Service</u>. No Ticket Server is required at the Customer Venue. The Licensed Programs and Customer database reside at a remote data-processing center supported by TicketReturn. All ticketing services are fully dependent on quality and reliability of Customer's Internet Service Provider (ISP.) ISP failures may result in total loss of all ticketing service to Customer.
- 1.1.6.3 <u>Ticket Workstations.</u> The Personal Computers (PCs) owned, operated, maintained and supported by Customer, which Customer personnel may use to access and use the Licensed Programs.
- 1.1.6.4 <u>Ticket Printers</u>. The thermal printing devices owned, operated, maintained and supported by Customer, which Customer personnel may utilize to print tickets using the Licensed Programs.
- 1.1.6.5 <u>Ticket Scanners</u>. The mobile computing devices and/or cabled readers owned, operated, maintained and supported by Customer, which may be used by Customer personnel to scan bar-coded tickets issued through use of Licensed Programs.
- 1.1.7 Confidential Information. "Confidential Information" includes (i) all information of Customer or TicketReturn to which the other party has access, whether in oral, written, magnetic, electronic, graphic or machine-readable form, and whether or not labeled as confidential, including business or financial information, intellectual property, business plans, strategies, forecasts, business practices and methods, marketing information and material, customer and supplier lists, including any other information related to Customer's business or the business of any of its affiliates; (ii) all information, whether oral, written, graphic or in machine-readable form, including business or financial information, intellectual property, business plans, strategies, forecasts, business practices and methods, marketing information and material, customer and supplier lists, proprietary ideas, concepts, know-how, methodologies, specifications, operations or systems manuals, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, research and all other information related to the parties' business. Confidential Information shall not include any information that:
 - 1.1.7.1 Is or becomes generally known to the public through no fault of the recipient;
 - 1.1.7.2 Is obtained without restriction from an independent source which independent source is not under an obligation to maintain its confidentiality:
 - 1.1.7.3 The recipient independently develops through persons who have not had access to such information; or

- 1.1.7.4 The disclosing party approves unrestricted release by written authorization; or
- 1.1.7.5 Must be disclosed pursuant to law or a valid order of a court having jurisdiction of the parties and the subject matter, provided however that, in the event a public records request is made to Customer for any information relating to the Licensed Programs or the Documentation, Customer shall inform TicketReturn that such a request has been made so that TicketReturn may have an opportunity to object to the public records request.
- 1.1.8 Online Sales Service Fees. The fee or fees paid by purchasers of online tickets offered by Customer, as defined in Schedule C of this Agreement.
- 1.1.9 <u>WV-96A.</u> Customer's Agreement Addendum for Software, incorporated by reference herein, and attached hereto as <u>Schedule E</u>. In the event of a conflict between the terms of this Agreement and the terms of <u>Schedule E</u>, the terms of <u>Schedule E</u> shall apply.

2. LICENSED PROGRAMS.

- 2.1 <u>TicketReturn Services</u>. TicketReturn shall provide Customer with the following software features in connection with use of the Licensed Programs:
 - 2.1.1 <u>Box Office</u>. TicketReturn Licensed Programs shall support Customer intranet services that allow Customer personnel to manage, sell, bar code and generate reports related to Customer's ticket inventory within Customer's Ticket Network.
 - 2.1.2 <u>Website</u>. TicketReturn Licensed Programs shall support Internet and Intranet services that allow Customer's online customers to purchase and manage tickets and ticket packages through links posted on Customer's web site(s), without limit to the number of web sites employed by Customer for this purpose.
 - 2.1.2.1 Online Ticket Account. TicketReturn shall establish an online ticket account for each ticket purchaser and allow ticket owners to access those accounts through Customer's web site(s).
 - 2.1.3 Reports. TicketReturn shall provide Customer with standard reports detailing ticket sales and ticket inventory. Where Customer has elected to barcode and scan tickets generated by the Licensed Programs, TicketReturn shall provide standard reports detailing attendance at Customer Events and Licensed Venues. TicketReturn hereby grants Customer a license to access the Licensed Programs database for the purpose of (1) generating reports through the use of compatible third-party software and (2) requesting custom reports from TicketReturn on a separate cost basis to be mutually agreed upon by the parties in writing at the time of service.

3. INSTALLATION, OPERATION, SUPPORT AND UPDATE OF LICENSED PROGRAMS.

3.1 <u>Customer's Responsibilities</u>. Customer shall have responsibility for the following (collectively "Customer's Responsibilities"):

Customer Equipment

3.1.1 Customer shall obtain, install, maintain and support Customer Equipment, including but not limited to all third-party operating system software and/or Non-Licensed Programs utilized by Customer on the Ticket Network. For the purpose of defining Customer and TicketReturn

responsibilities specific to the Ticket Server(s) and database stored on the Ticket Server, Customer may elect Site-Based Service or Hosted Service, as declared on <u>Schedule B</u> of this Agreement.

- 3.1.1.1 Site-Based Service. For best performance and reliability of access to the Licensed Programs, TicketReturn recommends Site-Based Service. Where Customer elects Site-Based Service, Customer shall procure, install and support its Ticket Server at Customer's Venue, including Non-Licensed Software or hardware described in <u>Schedule B</u>. Customer shall maintain backup copies of its data as Customer deems necessary for security and recovery purposes.
- 3.1.1.2 Hosted Service. Where Customer elects Hosted Service, TicketReturn shall provide remote ticketing services from a data-processing center. The TicketReturn data-processing center shall maintain redundancy of critical components and backup of Customer data. Customer shall provide broadband Internet service sufficient to maintain reliable connectivity to the TicketReturn data-processing center. Customer acknowledges and agrees that disruption of its Internet connection to the data-processing center may result in total disruption of services supported by the Licensed Programs.
- 3.1.1.3 Non-Licensed Programs. Customer acknowledges and agrees that the Licensed Programs may be subject to conflicts with Non-Licensed Programs and that Non-Licensed Programs may negatively impact system responsiveness and performance. Customer shall not knowingly install any gaming, entertainment, streaming media or other software on the Ticket Network. Ticket Workstations, and Ticket Scanners which may degrade system performance. Further, except as may be necessary to effectuate the purpose of this Agreement, Customer shall use commercially reasonable efforts to avoid the installation and use of Non-Licensed Programs on the Ticket Network Server, Ticket Workstations, and Ticket Scanners that would negatively impact performance of the Licensed Programs and thus impair TicketReturn's ability to perform its obligations pursuant to the terms of this Agreement. Customer agrees that, in the event that TicketReturn informs it that any Non-Licensed Program impact performance of TicketReturn Licensed Programs, it will remove all Non-Licensed Programs from the Ticket Server, Ticket Workstations, or Ticket Scanners, or release TicketReturn from responsibility for performance issues related to use of Customer's Non-Licensed Programs.

Operating Environment

3.1.2 Customer shall use commercially reasonable efforts to ensure that it provides a suitable operating environment for the Licensed Programs. Customer shall use commercially reasonable efforts to comply with specifications that the manufacturers of Customer Equipment may supply in writing in order to maintain Customer Equipment in operating condition.

Network Services

3.1.3 Customer shall provide network connectivity between the Ticket Network, Ticket Server, Customer Box Office locations, Ticket Workstations and, where bar-coding and Ticket Scanner services are employed, to gate entrances at Customer Venues where Ticket Scanners are to be deployed. Customer acknowledges and agrees that use of Licensed Programs at locations lacking network connectivity may result in limited or no functionality of Licensed Programs.

Network Integration

3.1.4 In the event Customer requests that TicketReturn's suggested Ticket Network configurations be adapted for integration into Customer's larger network environment, Customer shall provide, in a timely manner sufficient to meet all performance deadlines required of this

Agreement and at no charge to TicketReturn, qualified network support personnel as is reasonably required to accomplish the network integration request. Qualified network support personnel shall be defined as Microsoft Certified technicians or the practical experience equivalent thereof. TicketReturn reserves the right to decline support requests from unqualified personnel or for Ticket Network configuration adaptations which it believes may disrupt use of the Licensed Programs or compromise the secure use of the Licensed Programs.

Custom Integration and Programming

- 3.1.5 Customer acknowledges and agrees that TicketReturn will, at its sole discretion, submit separate proposals and cost estimates for all Customer requests for custom software development or integration with third-party software or Non-Licensed Programs not specifically defined by terms of this Agreement.
- 3.2 <u>TicketReturn's Responsibilities.</u> TicketReturn shall have responsibility for the following (collectively "TicketReturn's Responsibilities"):
 - 3.2.1 <u>Installation/Access to Customer's Network</u>. Within thirty (30) days of the full execution of this Agreement TicketReturn shall install the Licensed Programs.
 - 3.2.2 <u>Testing.</u> Following the initial installation of the Licensed Programs, TicketReturn shall conduct installation testing to confirm that the Licensed Programs operate properly in all material respects. Pursuant to the foregoing, TicketReturn shall conduct the following tests:
 - 3.2.2.1 Box Office ticket sales and services will be tested to ensure that Customer personnel can access and utilize the Licensed Programs for their intended purposes;
 - 3.2.2.2 Online and Box Office ticket sales will be tested to ensure that users can purchase tickets and that tickets can be printed at Customer Box Office.
 - 3.2.3 <u>TicketReturn Training and Support.</u> Once Customer has selected its qualified personnel to operate the Licensed Programs, TicketReturn shall provide Customer's personnel with up to 24 hours of remote training and support, at no added cost to Customer, to be scheduled at mutually convenient times and as reasonably agreed upon in advance by the parties. TicketReturn shall receive user support and training requests via telephone service between the hours of 9 am 5 pm EST on all days other than weekend days and holidays. TicketReturn shall receive emergency technical support requests via telephone service between the hours of 9 am Midnight EST on all days. Emergency support shall be defined as any disruption of Customer's ability to sell tickets, print tickets, or scan tickets, as a result of performance issues directly related to use of the Licensed Programs. All other technical support requests will be scheduled for follow-up on the next business day. Customer may request additional support and training at a rate of \$75 per hour. All Customer requests for on-site training at Customer facilities will be scheduled by TicketReturn at a mutually agreeable time and date at a rate of \$75 per hour plus Customer reimbursement of actual travel, meal and lodging expenses incurred by TicketReturn personnel, as defined in advance and authorized in writing by Customer.
 - 3.2.4 <u>Corrections and Updates of Licensed Programs</u>. TicketReturn shall support operation of the Licensed Programs by correcting any reproducible programming error that Customer brings to TicketReturn's attention. In the event that TicketReturn is not able to provide a same-day program fix or work-around for Customer, despite its required efforts, TicketReturn shall continue to use its best efforts to provide a program fix or work-around and shall report to Customer regularly as to the status of its efforts until the problem is resolved. Additionally, TicketReturn shall, from time-to-time, furnish Customer with updates and further releases of the Licensed Programs for the purpose of providing fixes, enhancements or new versions of the Licensed Programs.

4. MARKETING, ADVERTISING AND SALES.

4.1 Exclusive Student Ticket Issuer. For the Term (as defined in Section 5.1) of this Agreement, Customer shall cause TicketReturn to be the exclusive issuer of student tickets for all of Customer's Events at Customer's Licensed Venues. Any unapproved use of another student ticketing service provider by Customer other than TicketReturn shall be considered a material breach of Agreement, as defined in Section 5.4. Any online fees or other payments received by Customer from another student ticketing service provider in violation of this Agreement shall be deemed held in trust by Customer for the benefit of TicketReturn.

Timely Payment

4.1.1 Customer acknowledges and agrees that, in the event Customer's payment of TicketReturn invoices becomes delinquent by more than 45 days, TicketReturn may suspend Customer's use of all Licensed Programs until such time as any undisputed amount is paid in full.

Merchant Processing

4.1.2 Customer shall collect by direct deposit to its designated merchant bank account(s) the face value of each ticket sold through use of the Licensed Programs and paid for by bankcard or payment card, as well as any TicketReturn Online Sales Service Fees. Customer accepts sole responsibility for payment of all expenses associated with merchant processing of bankcard and other payment media service fees through its transaction authorization and merchant bank account services, regardless of the point of sales.

Card Payment Security

4.1.3 To ensure the security of cardholder information accessed by TicketReturn and by Customer in connection with this Agreement (collectively, "Cardholder Data"), TicketReturn and Customer hereby agree to adhere to applicable Payment Card Industry ("PCI") data security standards and requirements with respect to Cardholder Data, as such standards are established by the PCI Security Council at www.pcisecuritystandards.org (collectively, "PCI Standards.)" Further, TicketReturn shall provide an audited solution for Customer payment card routing that meets PCI DSS Standards. TicketReturn shall provide to Customer proof of annual PCI DSS Standards compliance, and such proof of compliance shall be prepared by a Qualified Security Assessor (QSA) according to PCI Standards. Customer and TicketReturn agree that all PCI Standards communications are Confidential Information, as defined by terms of this Agreement.

Ticket Taxes and Fees

4.2 In the event Customer is required by federal, state or local statute, act, ordinance or regulation, to charge additional fees, surcharges or taxes which are added to or included in the face value of tickets sold online ("Third Party Fees"), Customer shall notify TicketReturn and provide, with the notice, written evidence of the legal obligation on the part of Customer to charge such fees. Unless otherwise required as a matter of law, all Third Party Fees added to or included in the face value of tickets sold online shall also be added to or included in the face value of tickets sold at Customer' box offices, ticket outlets or by telephone, whether such sales are conducted by Customer, its agents or under consignment agreements. (Examples of permissible Third Party Fees under this Section 4.2 include: venue bond-issue recovery legislation; state and local sales taxes; and, where a venue is publicly financed in whole or in part, local facility-use ordinances.)

- 4.2.1 Customer shall not omit, charge or receive any fee or payment whatsoever that has the effect of reducing the Online Sales Fees reserved to TicketReturn under the Agreement. Customer shall not increase the price of tickets offered for sale online in a manner which causes the same or comparable tickets to be available for sale at a lesser price through Customer ticket office(s), outlets, consignees or telephone sales centers.
- 4.2.2 Customer shall not charge or receive any fee or payments of any kind in connection with online ticket sales for Events covered by the Agreement, other than those specifically authorized by this Agreement, without the prior, written consent of TicketReturn. Any online fees or payments received by Customer in violation of this Addendum to the Agreement shall be deemed held in trust by Customer for the benefit of TicketReturn.
- 4.2.3 Customer is solely responsible for the collection, reporting, and payment of all sales taxes or surcharges in the nature of sales taxes, payable in connection with the sale of tickets and merchandise under the Agreement. Only in the manner and to the extent permitted under North Carolina law, including but not limited to the NC Tort Claims Act, GS 143-291, et seq., and without waiver of its sovereign immunity, Customer hereby agrees to indemnify and hold TicketReturn harmless from any claim, demand, liability, cost or expense (including the cost of investigating such a claim or liability) with respect to such sales taxes or surcharges. Upon request by TicketReturn, Customer shall promptly provide documentation substantiating the payment of all sales taxes or surcharges in connection with the sale of tickets under the Agreement.

Brand and Database Rights

- Use of Customer's Name and Logo. Subject to the terms and conditions set forth herein, Customer hereby grants to TicketReturn a revocable, royalty-free, and without charge, limited non-exclusive license to use, reproduce, and display the trademark/trade name "West Virginia University and WVU" and associated Customer logos to the extent and under the terms authorized in writing by Customer solely for the purpose of enabling TicketReturn to fulfill its obligations under this Agreement. TicketReturn agrees that all use of the trademark/trade name "West Virginia University and WVU" and associated Customer logos and all related advertising, promotional, and other related uses, shall conform to quality standards set by and be under the control of Customer and must be approved in writing by Customer prior to use. TicketReturn agrees to cooperate with Customer in facilitating Customer's control of such nature and quality of the use of the trademarks/trade names. TicketReturn acknowledges that it has no ownership interest in Customer's trademarks/trade names or the "Charlotte 49ers" brand, and that upon the termination of this Agreement TicketReturn will promptly discontinue any further use thereof, except as otherwise provided herein or agreed to specifically in writing by the parties. Any such use of Customer's name and logo shall inure solely to the benefit of Customer.
- 4.4 <u>Use of TicketReturn's Name and Logo.</u> Subject to the terms and conditions set forth herein, TicketReturn hereby grants to Customer a royalty-free, and without charge, limited non-exclusive license to use, reproduce and display the trademark/trade name "TicketReturn" and its logo under such terms as may be authorized by TicketReturn in writing. Customer acknowledges and agrees that all use of the trademark/trade name "TicketReturn" and its logo and all related advertising, promotional, and other related uses, shall conform to quality standards set by and be under the control of TicketReturn and must be approved by TicketReturn in writing prior to any use, publication and distribution by Customer. Customer agrees to cooperate with TicketReturn in facilitating TicketReturn's control of such nature and quality of the use of the trademark/trade name. Customer acknowledges and agrees that it has no ownership interest in the trademark/trade name or the "TicketReturn" brand, and that upon the termination of this Agreement Customer will promptly discontinue any further use thereof, except as otherwise provided herein or agreed to by the parties. Any such use of TicketReturn's name and logo shall inure solely to the benefit of TicketReturn.

4.5 <u>Customer Database Ownership and Use of Database Information.</u> TicketReturn acknowledges that Customer is the sole owner of the ticket database utilized by the Licensed Programs and that such database is "Confidential Information" as such term is defined in this Agreement. TicketReturn shall not use any information contained in the database for any reason other than to fulfill the terms of this Agreement, which may include, at Customer's sole option and expense, Microsoft technical assistance in the diagnosis of performance issues related to Customer Equipment and third-party software, including Microsoft's database and operating systems software. Customer acknowledges and agrees that Customer's use of third-party software to query or access its ticketing database may alter or destroy data. TicketReturn shall not responsible under any circumstances whatsoever for data loss, alteration or damage caused by Customer's unauthorized access of the ticketing database. TicketReturn highly recommends that such data mining, report generation, or other access by Customer, if required, be conducted on a backup copy of its database, thereby protecting the integrity of Customer's original data.

TERM AND TERMINATION.

- 5.1 Term. The term (the "Term") of this Agreement shall commence on the Effective Date of this Agreement and continue through June 30, 2016.
- 5.2 Extension. The parties hereby may mutually agree in writing to amend and extend the Term of this Agreement for up to two one-year renewal terms in 2017 and in 2018. The parties shall endeavor to meet at least ninety (90) days prior to the expiration of the Agreement or any renewal period, for the purpose of discussing terms of such extension.
- 5.3 Exclusivity and Transferability. Customer's license to use the Licensed Programs is nonexclusive and nontransferable (except in the event of the sale of all, or substantially all, of Customer's equity or assets to a third party) and, subject to the preceding parenthetical phrase and the provisions of Section 12.3 hereunder, extends only to Customer's use of the Licensed Programs at Licensed Venues for Events in offices supporting those Licensed Venues.
- 5.4 Termination for Breach. Either party may terminate this Agreement upon a material breach by the other party of any of the representations, warranties, or obligations hereunder, if such material breach is not cured within 30 (thirty) days of written notice provided to the breaching party, or, as to a non-financial breach, the breaching party does not commence a cure and continuously and diligently pursue a cure that cannot be accomplished within thirty (30) days. Any of the following shall also constitute a material breach:
 - 5.4.1 Failure by either party to pay any undisputed fee or other amount that has become delinquent and payable hereunder; or
 - 5.4.2 Customer's unauthorized use of any ticketing service provider other than TicketReturn, as described in <u>Section 4.1</u>.
 - 5.4.3 Any act or Event whereby TicketReturn (1) is or becomes insolvent, (2) is or becomes a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of TicketReturn, or (3) makes a general assignment for the benefit of creditors. In the event of any occurrence described in (1), (2) or (3) TicketReturn, to the extent it may do so under law, shall provide Customer the use of the Licensed Programs hereunder to the end of the Agreement period.

6. FEES AND TERMS OF PAYMENT.

6.1 Customer agrees to pay and TicketReturn may charge the fees itemized on <u>Schedule C</u> attached hereto.

7. CUSTOMER PROPRIETARY PROTECTION OF LICENSED PROGRAMS.

- 7.1.1 Grant/Reservation of Title. Subject to the terms and conditions of this Agreement, TicketReturn grants to Customer a nonexclusive, right and license to use the Licensed Programs for the Term of this Agreement. This Agreement does not provide Customer with title or ownership of the Licensed Programs, but only a right of limited use. Customer acknowledges and agrees that the Licensed Programs are, and shall remain, the property of TicketReturn. Customer shall not make any copies of programs, database information and Documentation included with the Licensed Programs, other than the working copy and a reasonable number of copies to be used only for backup purposes. Customer shall not distribute any unlicensed copies of the Programs, database information and Documentation included with the Licensed Programs unless such distribution is contemplated by this Agreement.
- 7.2 <u>Copyright Protection</u>. Customer acknowledges that TicketReturn claims and reserves all rights and benefits afforded under federal law in the programs and Documentation included in the Licensed Programs.
- 7.3 Restrictions on Use of Licensed Programs. The programs, database information, and Documentation included with the Licensed Programs may not be decompiled, reverse engineered, reprinted, transcribed, extracted, or reproduced, in whole or in part, without the prior written consent of TicketReturn. Customer shall not in any way modify or alter the Licensed Programs without the prior written consent of TicketReturn.
- 7.4 Return of Programs. Customer shall promptly return the Licensed Programs, and all other materials and Documentation relating to the Licensed Programs, including all updates, corrections, modifications, and enhancements of the Licensed Programs provided by TicketReturn, upon termination of either this Agreement or Customer's license of the Licensed Programs, for any reason.

8. LIMITED WARRANTY AND SUPPORT; DISCLAIMER.

- 8.1 Warranty on Licensed Programs. TicketReturn warrants, for the benefit of Customer only, that as of the Effective Date TicketReturn has the right and authority to license the Licensed Programs to Customer, the Licensed Programs conform in all material respects to the terms and conditions in this Agreement and that the Licensed Programs will function for their intended purpose as described in the Agreement. TicketReturn warrants that, assuming Customer's Ticket Network and Customer's Internet Service Provider(s) are functioning adequately, Customer shall have virtually uninterrupted access to the Licensed Programs, excluding periodic maintenance as and when TicketReturn deems necessary; provided, that TicketReturn shall use commercially reasonable efforts to schedule any periodic maintenance during low-peak periods to minimize any interruption. TicketReturn further warrants that the Licensed Programs do not and will not infringe upon any copyrights, trade secret, patent, trademark or any other proprietary right of any third party. In addition, TicketReturn warrants that the Licensed Programs do not and will not contain any self-help code or unauthorized code, such as viruses, Trojan horses, worms and the like. This provision is not intended to limit software designed to permit TicketReturn to obtain access to Customer's computer network for purposes of authorized maintenance or technical support.
 - 8.1.1 <u>Disclaimer</u>. TICKETRETURN DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WITH RESPECT TO THE LICENSED PROGRAMS. TICKETRETURN FURTHER DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY TICKETRETURN, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.
 - 8.1.2 <u>Limitation of Liability</u>. THE LIABILITY OF TICKETRETURN TO CUSTOMER FOR BREACH OF WARRANTY OR ANY OTHER PROVISION OF RELIEF SHALL BE LIMITED TO AND SHALL NOT EXCEED THE AMOUNT OF ALL FEES PAID

TO TICKETRETURN DURING THE TERM OF THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES RELATING TO THIS AGREEMENT OR RESULTING FROM, IN THE CASE OF CUSTOMER, CUSTOMER'S USE OR INABILITY TO USE THE LICENSED PROGRAMS, OR FROM EITHER PARTY'S PERFORMANCE OR FAILURE TO PERFORM ANY SERVICES CONTEMPLATED BY THIS AGREEMENT, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT OR WARRANTY, EVEN IF SUCH PARTY HAD BEEN NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

RISK OF LOSS.

Data Backup and Storage

9.1 <u>Customer's Data Files.</u> For Site-Based Service, Customer is responsible for maintaining and storing in a safe and secure location backup copies of all data Customer may place in the Licensed Programs and attendant databases. In no event shall TicketReturn be liable for loss or destruction of Customer's data files for any reason. For Hosted Service configurations, TicketReturn shall maintain offline backup copies of Customer data sufficient for restoration of data. Customer also shall have access to standard reports that allow for export and storage of Customer records in spreadsheet or other file formats.

10. Obligations Relating to Confidentiality.

Confidentiality Protections

10.1 In connection with this Agreement, each of the parties may disclose to the other Confidential Information. "Discloser" shall mean a party that discloses Confidential Information pursuant hereto, and "Recipient" shall mean a party that receives Confidential Information pursuant hereto. Each Recipient agrees that the Confidential Information provided to it by the Discloser hereunder, including, without limitation, the terms of this Agreement, shall be received and maintained in confidence by Recipient; and Recipient shall not use, disclose, reproduce or dispose of such Confidential Information in any manner except as provided herein. Each Recipient agrees to use the Confidential Information solely for the purposes of fulfilling its obligations hereunder and agrees to restrict disclosure of the Confidential Information solely to its employees, contractors and agents who have a need to know such Confidential Information and to advise such persons of their obligations of confidentiality and non-disclosure hereunder. Each Recipient agrees to use reasonable means, not less than those used to protect its own similar proprietary information, to safeguard the Confidential Information.

11. INDEMNIFICATION.

Negligence

Both parties will be liable for the negligent acts or omissions of their respective officers, employees, and agents, which occur within the course and scope of their employment and result in injuries, damages or loss to others and shall (as to Customer, only in the manner and to the extent permitted under North Carolina law, including but not limited to the NC Tort Claims Act, GS 143-291, et seq., and without waiver of its sovereign immunity) hold the other party harmless from all loss, cost and expense arising from any such acts or omissions.

Infringement

11.2 TicketReturn agrees to defend, indemnify, and hold Customer harmless from and against any claim, suit, demand, or action alleging that the Licensed Programs or any component thereof infringes a U.S. patent or copyright, any trade secret, or any other intellectual property rights of any third party; provided, however, that:

- 11.2.1 Customer shall give TicketReturn prompt written notice of such action and all prior claims relating thereto;
- 11.2.2 At TicketReturn's sole expense Customer shall fully cooperate with TicketReturn in the defense and settlement of such action; and
- 11.2.3 If a temporary or a final injunction is obtained against Customer's use of the Licensed Programs or any component thereof by reason of an infringement of a U.S. patent, copyright, trade secret, or other intellectual property right, TicketReturn will, at its option and expense, either:
- 11.2.4 Procure for Customer the right to continue to use the Licensed Programs or such component;
- 11.2.5 Replace or modify for Customer the Licensed Programs or such component so it no longer infringes such patent, copyright, trade secret, or other intellectual property right, so long as the utility or performance of the Licensed Programs is not materially impaired; or
- 11.2.6 Remove the Licensed Programs and return to Customer all fees collected by TicketReturn.

Infringement Liability

- 11.3 TicketReturn shall have no liability to Customer for any infringement action that is based upon or arises out of the use of the Licensed Programs or any component thereof in combination with any other system, network, equipment, or software that is:
 - 11.3.1 Not referred to in this Agreement or otherwise furnished by TicketReturn as part of the Licensed Programs; or
 - 11.3.2 Not approved by TicketReturn in writing,

12. MISCELLANEOUS.

- 12.1 Good Standing. TicketReturn warrants and represents that it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina and has the power and authority to enter into this Agreement and to perform its obligations hereunder.
- 12.2 Amendment, Waiver. The Agreement may not be amended or altered and no rights shall be deemed waived unless such amendment or waiver is set forth in writing and executed by all parties hereto.
- 12.3 <u>Assignment.</u> This Agreement shall not be assigned by Customer without the consent of TicketReturn, which shall not be unreasonably withheld. TicketReturn may assign this Agreement to any acquirer of all or substantially all of its equity or assets.
- 12.4 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which when taken together shall constitute one complete instrument.
- 12.5 Entire Agreement. The parties agree that this Agreement, and all schedules, exhibits and attachments hereto, contain the entire agreement between the parties concerning the subject matter hereof and supersede all prior agreements on the same subject matter, and all prior oral or written discussions are merged herein.

- 12.6 Obligation to Cure. TicketReturn shall immediately correct or cure any nonconformity or defect in the Licensed Programs for which TicketReturn is responsible at no cost to The Customer. TicketReturn shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Programs (or any other breach with respect to the condition or operation of the Licensed Programs), if:
 - 12.6.1 The Licensed Programs are not properly installed in a suitable operating environment due to the fault of Customer;
 - 12.6.2 The Licensed Programs are not properly maintained and operated under normal conditions by trained personnel due to the fault of Customer;
 - 12.6.3 The Licensed Programs have been misused or modified, without TicketReturn's consent, or damaged due to the fault of Customer; or
 - 12.6.4 Customer has not notified TicketReturn within a reasonable time upon discovery of the pertinent nonconformity or defect (or other breach).
- 12.7 <u>Force Majeure</u>. Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of any act, Events, or circumstance beyond the reasonable foreseeable control of such party. The party so affected will resume performance as soon as reasonably possible.
- 12.8 <u>Headings</u>. The headings contained in this Agreement are for convenience only, shall be ignored when interpreting this Agreement, and shall not be construed to alter or change any provision hereof.
- 12.9 <u>Notice</u>. Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or when sent by regular mail or by personal courier to the address set forth in this Agreement (or any more recent address of which the sending party has been apprised).
- 12.10 <u>Publicity.</u> Upon Customer's review and prior written consent in each case, TicketReturn may announce to the public the existence of this Agreement, including the identity of Customer in connection with its publicity and promotion efforts related to its Licensed Programs. Except as otherwise authorized in writing by Customer, TicketReturn shall do business in its own name and shall not trade upon the name or credit of Customer. All brochures, advertisements or other solicitations shall be subject to Customer's prior written approval. This Agreement confers no rights upon TicketReturn to use the logos, marks and likeness of Customer in any advertising except as may be permitted under this Agreement.
- 12.11 <u>Severability</u>. If any provision of this Agreement should be held to be invalid, illegal or unenforceable, then such provision shall be construed in such a way as to make such provision enforceable, or this Agreement shall be construed as if such provision had never been contained herein, and such invalidity, illegality or unenforceability shall not affect any other provision hereof.
- 12.12 <u>Survival</u>. The provisions of <u>Sections 4.3, 4.4, 4.5, 7.4, 8, 10, 11, 12.9, 12.11</u> shall survive the termination or expiration of this Agreement.
- 12.13 Interpretation and Governing Law. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina without giving effect to the conflicts of laws provisions thereof.

[Signatures On Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to day and year first above written by and through their duly authorized officers.

WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY

By: Tim BOSTONIA
Signature:
Title: ASSE Dia
Date: 19 AUG 2013
Address: One NATERFANT Place
Magantown, WV 26506

TicketReturn, LLC

By: R LEROY DEDTON IR
Signature: A Delag
Title: PROIDENT
Date: 07/16/2013
Address: POBEX 241632
CHALLOTTE DC 28224
,

SCHEDULE A LICENSED PROGRAMS AND DATABASES

1. TicketReturn Product Module Name

- 1.1. UTicket (for student-ticketing usage only), consisting of TicketReturn Network Transaction Software (NTS) software, supporting all Intranet and Internet access to ticket sales, transfers and ticket printing functions contained in Licensed Programs.
- 1.2. UScan (for student ticketing issuance only), consisting of TicketReturn GateControl software support for Ticket Scanners contained in Licensed Programs.
- 1.3. UStudent, consisting of TicketReturn GateControl software support for Ticket Scanners contained in Licensed Programs.
- 1.4. Customer Ticket Manager tools, provided at no additional cost to Customer, including: TRExplorer ticket database manager, TRExtract database list extractor, TRInvoice database invoicing services, TRTicketDesigner database ticket stock design and output controller.
- 2. Software Documentation and HTML online help content, included in electronic Portable Document Form (PDF) and via Licensed Program interfaces, installed at Customer site by TicketReturn at commencement of service.

SCHEDULE B CUSTOMER EQUIPMENT

- 1. Service Election. Customer has elected Site-Based Service. Customer acknowledges and agrees that TicketReturn is a software and service provider only. TicketReturn supported hardware and network specifications are provided to prospective clients prior to initiation of contract development and are attached hereto as Exhibit A, "Technical Guide for TicketReturn", which TicketReturn shall update from time to time. Customer agrees that it has received and understands all TicketReturn hardware and software specifications and that it will comply with the standards contained therein or any updates thereof, which may be provided by TicketReturn from time to time. TicketReturn shall, at no additional cost to Customer, review configurations of Customer Equipment and software prior to Customer's acquisition of equipment and software for the purpose of ensuring compatibility with TicketReturn Licensed Programs. TicketReturn shall not be responsible for the adaptation of Licensed Programs for the purpose of conforming with Customer equipment or software that is not specifically supported and approved by TicketReturn.
- 2. <u>Procurement.</u> Customer acknowledges and agrees that it has sole responsibility for the acquisition, support and maintenance of all third-party equipment associated with operation of TicketReturn Licensed Programs.
- 3. <u>Customer's Network.</u> Customer acknowledge and agrees to supply, maintain and support all Ticket Network operating software and hardware, including but not limited to: network cabling, network cable installation, and all required wireless networking infrastructure, if required for support of Ticket Scanners; integration support for Customer's Ticket Network devices and services, including but not limited to, Intranet and Internet services; all installed Ticket Workstations; all installed Ticket Printers; all installed report, receipt and invoice printers; all installed cash drawers; all installed bankcard readers; all network security or firewall hardware and software; and workstation virus protection software, as defined by the terms of this Agreement.
- 4. <u>Customer's Internet Service and Security.</u> Customer shall provide a reliable commercial Internet Service Provider (ISP) of broadband services equivalent in performance to T1 or T3 data transfer rates, and all cables or connections necessary to deliver Internet and Intranet service to the Ticket Network and Ticket Server. TicketReturn recommends redundant Internet Service Providers for its clients who cannot risk temporary loss of ticket sales and related services caused by ISP failures and disruptions.
 - 4.1. Customer acknowledges and agrees that loss of Customer Intranet or Internet service will, through no fault of TicketReturn, result in loss of TicketReturn Licensed Program functionality, as well as secure remote installation, operations, support and update services, until such time as Internet Service is restored by Customer.
 - 4.2. Customer acknowledges and agrees that diminished bandwidth or data transfer rates on Customer's intranet LAN or Internet WAN service networks may result in corresponding performance losses in TicketReturn Licensed Programs.
 - 4.3. Customer acknowledges and agrees that Customer has sole and complete responsibility for the operation, support, upgrade, and maintenance of all third-party hardware associated with its Ticket Network and all Non-Licensed Programs employed therein, including manufacturer warranty, support and service claims associated with use of Customer hardware and software.

SCHEDULE C FEES AND TERMS OF PAYMENT

- 1. <u>Payment Schedule.</u> Customer agrees to make scheduled payments to TicketReturn upon receipt of invoices from TicketReturn, as follows:
- 1.1. On or about October 30, 2013, October 30, 2014, and October 30, 2015: \$1\$ for each eligible student record contained in Customer's UStudent database. (For example, 30,000 eligible student records x \$1 = \$30,000.)
 - 1.2. Monthly, full payment of \$1 for each student-guest ticket issued.

##

Schedule E

WV-96A Rev. 12/12

AGREEMENT ADDENDUM FOR SOFTWARE

In the event of conflict between this addendum and the agreement, this addendum shall control:

- <u>DISPUTES</u> Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
- 2. HOLD HARMLESS Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
- GOVERNING LAW The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any
 other State's governing law.
- 4. TAXES Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
- PAYMENT Any references to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance.
 Payment for services will be in arrears.
- 6. INTEREST Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
- 7. NO WAIVER Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
- 8. FISCAL YEAR FUNDING Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
- 9. <u>STATUTE OF LIMITATION</u> Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
- SIMILAR SERVICES Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
- 11. FEES OR COSTS The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction.

 Any other provision is invalid and considered null and void.
- 12. ASSIGNMENT Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
- 13. LIMITATION OF LIABILITY The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
- 14. RIGHT TO TERMINATE Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.
- 15. TERMINATION CHARGES Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
- 16. RENEWAL Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
- 17. INSURANCE Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
- 18. <u>RIGHT TO NOTICE</u> Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
- 19. ACCELERATION Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
- CONFIDENTIALITY -Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts
 are public records under the West Virginia Freedom of Information Act.
- 21. <u>AMENDMENTS</u> All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA	VENDOR
Spending Upin WEST VIEWAIA WINZESITY	Company Name: 11 CKETRETURE, UC
Signed:	Signed:
Title: ASSOC. Dia	Title: PROIDAT
Date: 19 Aug 2013	Date: 08/16/2013

West Virginia University		FY	Buyer	Date	Acct #	P. O Date	Order#		
Purchase Change Request 17			17	R	5/8/17	Various	8/2/16	U17TIC	KETMASTER
Document Requisition (Cancellation Only) Regular Purchase Order Contract Purchase Order XX Open End Contract Purchase Order Agreement Purpose of XX Increa XX Requisition (Cancellation Only) Cancellation Only) XX Increa XX Preigh Renew Extens				Cancellat	Decrease Jalance(\$25.00 Maximum)	Error in Change Change Other	Total Amount of Account of Vendor Name/	Address	
Vendor Name, Address, FEIN, Phone # TicketMaster LLC 7060 Hollywood Blvd Hollywood, CA 90028						West Virginia University One Waterfront Plate PO Box 6640 Morgantown, WV 2	ersity ce / 2nd Floo	or	
Item#	Quantily	Unit M			Descri	ption		Unit Price	Extended Price
			Change Order #						
TO PROVIDE THE FOLLOWING: Student Ticketing Services									
Reason for Change: 1. To add premium Archtics ticketing platform						Previ	ious Total \$	Open End	
						•			
					-		Decrease \$ New Total \$	Open End	
Funding I	Paragraph				,	Approved			
		this contract is to I			_	Sund B	-	<u> </u>	5/12/17

the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after June 30.

Chief Procurement Officer

Date

AMENDMENT TO LICENSED USER AGREEMENT

THIS AMENDMENT TO LICENSED USER AGREEMENT ("Amendment") is entered into as of May 8, 2017 (the "Effective Date"), by and between Ticketmaster L.L.C., a Virginia limited liability company ("Ticketmaster"), and University of West Virginia Board of Trustees on behalf of West Virginia University ("Principal"), with reference to the following facts:

- A. Ticketmaster and Principal entered into that certain Licensed User Agreement dated as of June 30, 2016 (the "Licensed User Agreement").
- B. Ticketmaster and Principal hereby desire to amend the Licensed User Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree, effective as of the Effective Date set forth above, as follows:

1. <u>Defined Term(s)</u>. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Licensed User Agreement. The following new definitions are hereby added to Section 16 of the Licensed User Agreement;

AccountManager. The Ticketmaster Software and hosting services that allow Subscribers to manage their accounts.

<u>Archtics</u>: The Ticketmaster Software that delivers extensive season, miniplan and single ticket functionality in connection with the Ticketmaster host system and distribution channels for inventory control by Ticketmaster and Principal.

<u>GroupManager</u>: The Ticketmaster Software and hosting services that allow Principal and Principal's customers to manage their group ticket experience.

<u>Hosted Platform:</u> The equipment, operating system, hardware and software specifications, and networking environment on and with which the Archtics Software is hosted by Ticketmaster, and additions or replacements to the foregoing which may be implemented by Ticketmaster in accordance with the terms of the Licensed User Agreement.

Interface Page: A co-branded web page interface for use with Products transactions, designed, created and maintained by Ticketmaster to have, in general, the look and feel of Principal's Website and hosted on Ticketmaster's web servers.

Subscriber: Any person who holds an account on Principal's AccountManager.

License and Use of Archtics; Hosted Platform.

(a) Principal's Website/Interface Page. Beginning on or shortly after the execution of this Amendment, and subject to the completion of the installation of Archtics, Ticketmaster will develop the Interface Page that will enable Principal's Subscribers to access their account information and conduct "real-time" transactions by linking to the Interface Page from the Principal's Website. The Interface Page may contain a short, related textual description of AccountManager features and shall contain Ticketmaster's designated wording and graphic depiction thereof, currently "by Ticketmaster."

- (b) <u>Archtics Support</u>. Ticketmaster shall provide maintenance and support for the Archtics Software in accordance with the terms set forth in Section 6 of the Licensed User Agreement. Ticketmaster will not be obligated to continue to provide maintenance with respect to any version of any particular Archtics Software product hosted by Principal for more than one year after a release by Ticketmaster of an upgraded version of the same Software.
- (c) <u>Customization Services Provided at No Additional Cost</u>. With respect to initial implementation of the Ticketmaster Archlics Software, Ticketmaster shall also provide, at no additional cost to Principal, (i) on-site support from Ticketmaster's national or regional personnel, (ii) unique Ticketmaster Archtics customization (e.g., diagrams, invoices, other executables, etc.), (iii) custom reporting, and (iv) customized on-line assistance. (Services described in (ii) through (Iv) are referred to herein as "Customization Services".) Generally two hours of Customization Services each week are included in the annual maintenance fees of Archtics. Customization Services that far exceed this level of support will be billed to Principal.
- provide and maintain the Hosted Platform on which the Archtics Software will be installed and run, including provision of the physical environment including physical security, HVAC and power for the required server hardware for the Hosted Platform and the Archtics Software. Ticketmaster will also provide access via certain internet connectivity, by being responsible for network operation and availability from the public internet up to the termination cables at the network interface card on the server hardware for the Hosted Platform. Ticketmaster will not be responsible for power at the Facility or Principal's connectivity to the Internet. Ticketmaster shall maintain an archive of Principal's Archtics database for up to two (2) years in the format of Principal's then current Archtics version. Ticketmaster shall retain archives of Principal's Archtics database in excess of two (2) prior years in an offline form to be stored at Ticketmaster's data center, which prior archives shall not be updated to Principal's then current Archtics version; provided, that Ticketmaster shall extract data from such prior archives at Principal's request and deliver such data extracts to Principal.

3. Archtics Fees.

(a) License and Maintenance Fees:

Software	Software License Fees				
Archtics – Hosted Platform	\$22,500.00 annually	N/A			
Archtics Installation	\$5,000 (one-time fee)	N/A			
Archtics – Sybase Includes up to six (6) Sybase licenses. A \$1,100 per license per Contract Year fee shall be charged for each additional license requested by Principal.		N/A			
AccountManager	\$5,000 annually	N/A			
GroupManager	Waived because bundled with AccountManager	N/A			

(b) Archtics Transaction Fees:

Type of Transaction Fee	Amount of Transaction Fee
AccountManager Transactions	
Sales to Subscribers (Students):	
Full season, flex and static plans, and single Ticket sales	\$2.00 per Ticket
Sales to Subscribers (Non-Students):	
Full season, flex and static plans with 4 or more events	\$3,00 per seat
Flex and static plans with less than 4 events	\$4.00 per seat.
Single Ticket sales	Convenience Charge set forth in Exhibit A of the Agreement, net of Royalties due Principal
Electronic Check Payment (if applicable)	\$3.00 per payment
TicketFast from Archtics (complimentary tickets)	\$0.00 per Ticket
Per invoice processing	\$2,00 per payment processed
Ticket Forwarding Fee	\$0.00
Online upgrades	\$2.00 per Ticket
Online exchanges via AccountManager	\$2.50 per Ticket
Online donations	\$0.00
GroupManager Transactions	
Group Sales	\$3.00 per Ticket

In the event Principal elects to charge Subscribers for the Software transactions in addition to and above the applicable Archtics transaction fees charged by Ticketmaster as set forth above, such additional amount charged by Principal up to an amount equal to the Archtics transaction fee may be retained by Principal and any excess amount charged by Principal shall be divided equally between Principal and Ticketmaster.

(c) <u>Credit Card Charges for Archtics Transactions</u>: With respect to Archtics transactions processed by Ticketmaster, Ticketmaster agrees to absorb the credit card company charge with respect to the portion of the transaction fees payable to Ticketmaster, and Principal agrees to absorb the credit card company charge with respect to all other proceeds from Archtics transactions in an amount equal to 2.55% of such proceeds, which percentage rate may be deducted from amounts owed to Principal pursuant to this Agreement or invoiced by Ticketmaster as a transaction fee. Such percentage rate is subject to automatic increase due to increase to the interbank rates imposed on Ticketmaster.

Conflicting Terms. In the event a conflict arises between this Amendment and the terms and conditions of the Licensed User Agreement the terms and conditions of this Amendment shall control. Except as specifically set forth herein to the contrary, all of the terms and conditions of the Licensed User Agreement are in full force and effect, shall continue in full force and effect throughout the term and are hereby ratified and confirmed by the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth below.

TICKETMASTER INDIANA,	4	University of West Virginia Board of Trustees on behalf of West Virginia University
an Indiana jojot venture		\cap
By: Coop Cas		By: Me Be
Title:		Title: CfO
Date:		Date: 5/9/17



Procurement Contracting & Payment Services
One Waterfront Place / 3rd Floor / Don Knotts Blvd
PO Box 6024
Morgantown WV 26506
Ph: 304-293-5711

Visit WVU PCPS on the internet: http://pcps.wvu.edu

Number:

U17TICKETMASTER

Please show this number on all packages and documents related to this Order.

Vendor: TicketMaster LLC 7060 Hollywood Bivd Hollywood, CA 90028		Ship To: West Virginia University One Waterfront PI / 2nd FI / PO Box 6640 Morgantown WV 26506-6640		Invoice To: West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd PO Box 6024 Morgantown WV 26506-6024 Ph: 304-293-5711 Itemize Invoices According to Purchase Order One (1) original invoice required		
Date of Order / Buyer: August 2, 2016 M. Royce	Payment Terms: 30 Net	Ship Via: Best Way	FOB: Destination	Freight Terms: TBD	Delivery Date: Per Agreement	

AGREEMENT

This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University and TicketMaster LLC

for: Student Ticketing Services

Services beginning July 1, 2016

and extending through

June 30, 2022

All services shall be performed in accordance with the standard form of agreement attached hereto as a part hereof.

Service performed under this Agreement is to be continued in the succeeding fiscal year contingent upon funds being appropriated by te Legistlature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work.

Total Amount of this Order:

Open End

Authorized Purchasing Agent Signature:

Michelle Royce

All CONTRACTS / PURCHASE ORDERS / AGREEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS INCLUDED HEREIN

WVU FOIA #19209 (SUP)-063

LICENSED USER AGREEMENT

THIS LICENSED USER AGREEMENT ("Agreement") is entered into as of August 2, 2016 and is made effective as of June 30, 2016 ("Effective Date"), by and between Ticketmaster L.L.C., a Virginia limited liability company ("Ticketmaster"), and University of West Virginia Board of Trustees on behalf of West Virginia University, ("Principal"). This Agreement consists of this Licensed User Agreement and Exhibit A, Compensation, Exhibit B, Hardware, Exhibit C, TM+ Terms and Conditions, and any other Exhibits attached hereto which are incorporated herein by this reference. This Agreement, upon the Effective Date, shall supersede and replace that certain similar Licensed User Agreement dated as of August 1990, by and between Ticketmaster and Principal (as may have been amended by the parties prior to the date hereof, the "Prior Ticketing Agreement") in connection with Attractions having an initial On-Sale Date on or after the Effective Date hereof. For clarity and notwithstanding any terms herein to the contrary, the terms and conditions set forth in the Prior Ticketing Agreement shall continue to apply with respect to Attractions having an initial On-Sale Date before the Effective Date hereof. The meanings of all capitalized terms used in this Agreement are set forth in Section 16 hereof. In consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. <u>TERM</u>: The term of this Agreement shall begin on the Effective Date and shall continue through the sixth (6th) anniversary hereof (the "Term"). Each twelve (12) month period commencing on June 30 and continuing through the following June 29 shall be a "Contract Year" as such term is used herein.

2. TICKET SALES RIGHTS; EXCLUSIVITY:

- (a) <u>Grant of Rights</u>: Principal hereby grants to Ticketmaster, and Ticketmaster accepts from Principal, the right during the Term of this Agreement, to be the exclusive seller, as Principal's agent, of all Tickets for the Sellable Capacity for every Attraction via any and all means and methods, Including on the Internet, by telephone, computer, IVR, outlets, television, clubs, auctions, VIP packages, presales, upsells, or by any other means of distribution, whether existing now or at any time in the future. Principal shall ensure that the entire Sellable Capacity for every Attraction shall be made available for distribution on the TM System.
- (b) <u>Sales by Principal</u>: Subject to the terms of this Section 2, Principal retains the right to: (i) sell single Tickets from the Facility Box Office to persons physically present at the Facility Box Office; (ii) sell Season/Contract Tickets; (iii) conduct Group Sales of Tickets; and (iv) provide a reasonable number of House Seats for any Attraction.
- (c) No Third Party Systems or Services: Principal shall not directly or indirectly use, sponsor, promote, advertise, authorize or permit the use of any third party that promotes, engages in or facilitates the sale, resale or issuance of tickets.

1

- (d) <u>No Minimum Sales</u>: It is agreed and understood that neither Ticketmaster nor Principal guarantees or will guarantee that any minimum or fixed number of Tickets will be sold through the TM System for any Attraction.
- (e) <u>Acknowledgement by Principal</u>: Principal acknowledges that Ticketmaster acts as the agent of certain third parties that may be a direct or indirect competitor of Principal. Principal also acknowledges that Ticketmaster has entered and may in the future (including during the Term of this Agreement) enter into new business relationships with other third parties, including those in the entertainment and sports industry, such as performers who perform at the Facility, for a variety of services. Principal further acknowledges that any such sales or services or solicitations to provide such sales or services as contemplated under this subsection do not compete with Principal or conflict with this Agreement or Ticketmaster's rights, duties or obligations under this Agreement.

3. COMPENSATION:

(a) <u>Ticketmaster Charges and Fees</u>: In consideration for Ticketmaster's services provided hereunder as an agent of Principal, Ticketmaster shall be entitled to assess and receive charges and fees in the amounts set forth on <u>Exhibit A</u>, all of which charges and fees shall be assessed against consumers, except for Inside Charges, which shall be assessed against Principal. In the event applicable law prohibits the assessment of such fees against consumers, Ticketmaster and Principal shall agree on alternative means for compensating Ticketmaster for its services in amounts reasonably comparable to those set forth in this Agreement, and as permitted by applicable law. Notwithstanding the above, charges and fees with respect to any Attractions presented by Feld Entertainment (including, without limitation, Disney on Ice, Circus, and Motor Sports) ("Feld Attractions") at the Facility shall be determined pursuant to a separate national agreement between Ticketmaster and Feld Entertainment.

(b) Payment Processing Fees:

- Sales: With respect to Tickets purchased with credit cards, debit cards, gift cards or any other methods of payment, the payment authorization and processing fees ("Payment Processing Fees") shall be passed on to the ticket purchaser at the rate set forth on Exhibit A by increasing the applicable Convenience Charge set forth on Exhibit A by the amount of such Payment Processing Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05. Notwithstanding the above, with respect to any Feld Attractions, Principal agrees that Principal shall be obligated to pay for the Payment Processing Fees for Tickets to Feld Attractions, or shall obtain the agreement of Feld Entertainment to adjust the Convenience Charge to include the amount of such Payment Processing Fees; in any such event Ticketmaster shall not be obligated to absorb the Payment Processing Fees with respect to the Face Value of Tickets to any Feld Attractions.
- (ii) <u>Sales at Outlets</u>: With respect to all purchases at Outlets, Payment Processing Fees shall be passed on to the ticket purchaser at the rate set forth

on Exhibit A by increasing the applicable Convenience Charge set forth on Exhibit A by the amount of such Payment Processing Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05.

(iii) Principal Sales Using TM Charge: In connection with Principal's sales of Tickets utilizing electronic payments and authorized via TM Charge using either Visa or MasterCard, Ticketmaster's credit card processor ("Processor") shall deduct the merchant fees in an amount set forth on Exhibit A for transactions processed on a daily basis. The fees charged to Principal for use of TM Charge are subject to automatic increases equal to any actual increases in Ticketmaster's Processor fees. Principal shall also be responsible for any and all other amounts charged to Ticketmaster (if any) by a Processor for processing Principal's transactions, including, without limitation, chargebacks, fraudulent credit card use and additional charges for failure to meet the specific timing or other qualifications of the applicable credit card association or company. In the event that Principal desires to process any credit or debit cards other than Visa or MasterCard utilizing TM Charge, then the fees for such service shall be mutually agreed upon by Principal and such credit card companies, and Principal shall enter into its own merchant agreement with such credit card companies.

(c) Compensation to Principal:

(i) Principal's Royalties: Principal shall be entitled to receive Ticket sales royalties (collectively, "Royalties") from Ticketmaster in the amounts set forth on Exhibit A with respect to each Ticketmaster fee set forth on Exhibit A to the extent received (and not refunded) by Ticketmaster. Notwithstanding the above, Payment Processing Fees and applicable taxes related to any Ticketmaster fees shall be deducted from the applicable fees before the Royalties are calculated. Principal shall not be entitled to Royalties with respect to any Tickets sold to any Feld Attractions at the Facility, or with respect to any House Seats distributed through fan clubs, if applicable.

4. LICENSE AND USE OF HARDWARE AND SOFTWARE:

- (a) <u>License</u>: Ticketmaster hereby grants Principal a non-exclusive, non-transferable license to use the Hardware and Software (collectively, the "License") in exchange for the fees set forth herein.
- (b) <u>Use</u>: The Hardware and Software and all related materials may only be used by Principal in connection with the Attractions and only with systems used, operated and owned by Ticketmaster, and only for the purposes stated in this Agreement, and may not be utilized by or in connection with services, software, hardware or systems provided or supplied by any third party. Principal shall use the Hardware and Software in a careful and proper manner and shall comply with and conform to all federal, state, county, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Hardware and Software Including, but not limited to, federal, state or other laws applicable to commercial emails. Except as otherwise provided in the immediately preceding sentence, Principal hereby agrees: (i) not to permit copying or reproduction of the Hardware or Software in any manner, including without limitation, use in a sharing arrangement or transmission over the Internet or over e-mail

and similar electronic transmission; (ii) not to disassemble, re-manufacture, repair, reconfigure, enhance, upgrade, modify, translate, adapt, create derivative works from or of, decompile or reverse engineer the Software in any way nor merge them into any other program for any purpose; (iii) not to transfer, license or sub-license, assign, rent, sell, grant, publish, disclose, display, dispose of or otherwise make available the Software, or any rights therein or copies or derivatives thereof, including other templates or working systems; (iv) not to delete, remove, change or otherwise alter any trademarks, copyright notices or other proprietary marks in or on the Hardware or Software, or any copies, modifications or partial copies thereof; and (v) not to "hack," or attempt to "hack," any of the Software, the servers on which the Software is hosted or any other portion of the Ticketmaster network, or otherwise attempt to circumvent, or navigate outside of, the borders of such Software servers in any manner whatsoever.

(c) <u>Passwords</u>: Principal agrees that use of the TM System by Principal shall be restricted to a reasonable number of Principal's personnel having passwords in the event that Ticketmaster assigns such passwords. Such passwords shall not be transferable without the written permission of Ticketmaster, which permission shall not be unreasonably delayed or withheld. Upon Ticketmaster's reasonable request, Principal (i) shall identify, as the case may be, the users (by name, position and site address), who use or view the TM System or from where the TM System is used, and (ii) shall provide to Ticketmaster access to any database which records access to the TM System.

(d) TM Charge:

- Use and Operation of TM Charge: Ticketmaster shall transmit data relating to Ticket sales made by Principal using TM Charge to Ticketmaster's credit card processor, provided Ticketmaster has received Principal's merchant number(s) and other necessary information for Ticketmaster to use for the transmission of sales data. Principal shall be responsible for promptly notifying Ticketmaster and Processor, if applicable, of any changes to the information provided pursuant to this Section. Processor will then transmit such data to the applicable credit card company for payment to Principal, subject to Principal having entered into the applicable Principal Processor Agreements (as further described below). Ticketmaster shall use its best efforts to ensure the accuracy of information transferred from the Processor via TM Charge, but Ticketmaster does not guarantee the accuracy and timeliness of such information. Principal shall comply with all applicable credit card association or company guidelines (e.g. swiping all retail transactions and using customer address information for all nonface-to-face transactions). Ticketmaster shall provide Principal with daily transaction reports regarding authorized and settled transactions. Principal shall review, on a regular basis, all reports provided to Principal by Ticketmaster. Principal also agrees that, for operational and monitoring purposes, the Processor may provide Ticketmaster with processing and settlement reports related to sales of Tickets using TM Charge.
- (ii) Effect of Termination of Ticketmaster's Processor Agreement: Ticketmaster has entered into an agreement with the Processor (the "Processor Agreement"), and Principal agrees to enter into an agreement with such Processor (the "Principal Processor Agreement") as soon as practicable after the date of this Agreement. The Principal Processor Agreement shall provide that if the related Processor Agreement

expires or terminates, then the Principal Processor Agreement shall also expire or terminate without any early termination penalties or charges. In order to facilitate streamlined credit card authorization processing for Ticketmaster and its clients, Ticketmaster continues to seek to maintain relationships with superior processors throughout the Term of this Agreement. In the event that Ticketmaster elects to use a different Processor, Principal shall enter into an agreement with such new Processor if Principal desires to continue utilizing TM Charge, it being acknowledged and agreed by Principal, however, that use of certain Software (e.g., AccountManager) may require utilization of TM Charge.

(e) <u>TM+</u>: Ticketmaster shall enable its proprietary, integrated primary and secondary market ticket inventory platform and technology on the TM.com Website, which platform and technology shall enable consumers searching for Tickets to an Attraction to simultaneously view Tickets available for initial sale directly by Principal pursuant to this Agreement, in addition to Tickets available for resale from other consumers (collectively, "TM+"), in accordance with the terms and conditions set forth on Exhibit C attached hereto.

5. INSTALLATION AND SET-UP:

- (a) <u>Hardware Installation</u>: Ticketmaster will install the Hardware and provide Principal with access to the Software. Principal will provide (i) connectivity and interfacing that satisfy Ticketmaster's minimum system requirements and (ii) unless otherwise agreed to between the parties, any type of equipment and technology necessary to assist Ticketmaster in completing the installation of the Software and Hardware. Ticketmaster shall have no responsibility for any internal wiring or cabling (e.g., electrical, data lines, etc.) necessary for installation, operation or for proper functioning of the TM System at the Facility. The cost of all line connections between the central computer facility and the Facility and all monthly line costs with respect to the operation of the TM System between the Facility and the central computer facility shall be borne solely by Principal.
- (b) Attraction Set-Up: In order to effectively utilize Ticketmaster's distribution technologies, within a reasonable time before (but in no event less than the time period described below) the scheduled on-sale date of Tickets for each Attraction (the "On-Sale Date"), Principal shall furnish Ticketmaster with all necessary information with respect to the Attraction, including, without limitation, seating layout of the Facility, Ticket structure, discounts permissible, Attraction Taxes, any information necessary to calculate Attraction Taxes, if applicable, Ticket header information, logos, entry information, vision and hearing information, wheelchair and other accessible seating information and such other information as is necessary for the proper sale of Tickets (collectively, the "Set-Up Information"). The parties intend that all accessible seating Tickets that are available for sale on the TM System and such accessible seating Tickets shall not be released into the general pool of Tickets that are available for sale until forty-eight (48) hours before an Attraction. Principal must provide the Set-Up Information to Ticketmaster at least five (5) business days prior to the On-Sale Date for new Attractions that do not

utilize seating charts then existing in the TM System and at least three (3) business days prior to the On-Sale Date for new Attractions that utilize seating charts then existing in the TM System. Ticketmaster shall have no responsibility for any and all liabilities, claims, expenses (including court costs and reasonable attorneys' fees) and causes of action resulting from the inaccuracy of any Set-Up Information furnished by Principal pursuant hereto.

- (c) Facility Box Office Will-Call Services: At all times during the Term of this Agreement, Principal shall maintain a designated Facility Box Office location for the pick-up of Tickets purchased through Internet Sales and Telephone Sales. The pick-up location shall be open during the normal hours of operation of the Facility Box Office. Principal shall notify Ticketmaster of Principal's will-call capabilities and will-call Facility Box Office hours. Principal shall verify the identity of each person picking up Tickets at will-call via a valid photo identification (government issued) and the credit card used in the Ticket sales transaction. Principal shall not release Tickets to any customer whose identity has not been so verified.
- (d) <u>Supplies</u>: Principal shall be responsible for maintaining adequate nondurable operational supplies used at the Facility in connection with the operation of the Hardware and Software to assure continuous operations at the Facility.
- (e) <u>Ticket Stock</u>: Principal shall be responsible for the security of Ticket stock in its possession, and the risk of loss of Ticket stock shall shift to Principal upon the delivery thereof to Principal or Principal's authorized representative, agent or employee.

6. MAINTENANCE AND SUPPORT:

- (a) Hardware and Software Maintenance and Support: Ticketmaster shall provide ordinary and routine maintenance and repair services and adequate support of the Hardware and Software at the Facility to meet the reasonably anticipated service needs of Principal from time to time at no charge, provided that such maintenance, repair or support is not necessitated by the negligence or willful misconduct of Principal, its employees, agents or representatives. Support services will be provided, on a return call basis, during Ticketmaster's normal business hours by personnel qualified to answer telephone inquiries by Principal seeking advice on questions and problems. Non-emergency calls made at the end of the day, which require support services that would keep staff beyond normal working hours, will be deferred to the following business day. Support will be provided for off-hour critical system emergencies.
- (b) <u>Training of Principal's Employees</u>: Principal shall staff the Facility Box Office with its employees for the proper operation of the TM System for Ticket sales made through the Facility. Ticketmaster shall train, at its expense, Principal's employees who shall be reasonably necessary for the initial staffing of the Facility Box Office and for initial operation of the TM System for single ticket sales at the Facility. Ticketmaster shall also provide additional training at its cost to other employees of Principal to the extent such training is necessary as a consequence of changes initiated by Ticketmaster or changes in Ticketmaster's method of operation. To the extent of any change in personnel by Principal in connection with Facility Box Office sales requiring additional training

beyond that initially contemplated hereunder, Principal agrees to absorb all of the expenses (including any and all reasonable travel expenses) thereof.

- (c) <u>Notification by Principal</u>: In the event of any breakdown or malfunction in the operation of any of the Hardware or Software, or difficulties encountered in connection with access to any of the Software, Principal agrees to promptly notify Ticketmaster of any such breakdown, malfunction or difficulty to assist Ticketmaster in performing its obligations hereunder.
- (d) Access to Principal's Equipment and Data: Principal shall permit Ticketmaster, at Ticketmaster's sole discretion and upon reasonable written notice, the right at a reasonable time to inspect Principal's pertinent sites and equipment (including any existing LAN or other network user monitor device) for the purpose of determining compliance with the terms of the License granted hereunder. In order to correctly diagnose faults in the equipment and data related to the Software and Hardware, Principal will provide Ticketmaster 24 hour remote access to Principal's installation, pertinent sites, equipment (including any existing LAN or other network user monitor device) and user data through PC Anywhere. Failure to provide such access may prohibit effective action by Ticketmaster and render Ticketmaster unable to proceed, and in such circumstances, Ticketmaster shall be under no liability for failure to perform its obligations hereunder.

7. ADVERTISING:

- (a) Advertising on Tickets Fulfilled at Facility Box Office: For tickets fulfilled by Principal at the Facility Box Office, Principal shall either (i) provide, or pay Ticketmaster to provide, its own blank custom ticket stock and ticket envelopes in which case Principal shall have the right to sell advertising on such ticket stock and ticket envelopes or (ii) have Ticketmaster provide Ticketmaster's standard ticket stock and ticket envelopes in which case Ticketmaster shall have the right to sell advertising on such ticket stock and ticket envelopes.
- (b) <u>Ticketmaster Advertisements</u>: Principal hereby grants to Ticketmaster the right, in Ticketmaster's sole discretion, to advertise, in any medium determined by Ticketmaster, including on the TM.com Website or affiliated websites, Attractions and the availability of Tickets at the Facility Box Office, at all Outlets, and by Internet Sales and Telephone Sales and the availability of the Software and, in connection therewith, to use the name and logo of Principal, the Attraction, the Facility and all other information respecting the Attractions.
- (c) <u>Principal Advertisements</u>: Principal may, during the Term hereof, provide and place advertisements in any form of media which Principal shall desire to promote the availability of Tickets, the TM.com Website and the Attractions (except on websites or other media operated by, or on behalf of, third parties that promote, engage in or facilitate the sale, resale or issuance of tickets); provided, however, that in the event Principal shall place any such advertisements, it shall use its best efforts to cause Ticketmaster's name, logos and if the advertisement relates to the availability of Tickets, the applicable TM.com Website address and charge-by-phone number and, if possible,

the identity of the Outlets where Tickets may be purchased, to be displayed in the advertisement, as well as the address of the Facility. Principal shall cause Principal's Website to deeplink to specified web page(s) within the applicable TM.com Website where ticket purchasers can begin the process of purchasing Tickets to Attractions. Principal agrees to promote the availability of Tickets on the TM.com Website by including, at a minimum, one "above-the-fold" graphic Ticketmaster branded link to the TM.com Website on each web page featuring one or more of the Attractions on Principal's Website. Such link will include the TM.com Website graphic logo and a call to action such as "buy tickets."

- (d) <u>Ticketmaster Client Style Guide</u>: The look and feel of any and all links from Principal's Website to the Interface Page or the applicable TM.com Website are subject to Ticketmaster's prior approval. Principal shall comply with all terms and conditions of Ticketmaster's Client Style Guide, as it may be updated from time to time.
- (e) <u>Advertising Revenue</u>: Ticketmaster and Principal shall separately receive and retain their respective income derived from advertising which each is entitled to sell under subsections (a), (b) and (c) above.

8. ACCOUNTING PROCEDURES:

(a)	Payments	by	Ticketmaster:	Principal	hereby	authorizes
Ticketmaster and the	e financial in:	stituti	on indicated below	w ("Bank") to	deposit ai	i settlement
funds payable to Pri	ncipal hereu	nder	in the account lis	ted below ("F	rincipal's	Account"):
• -3						
Financial Institution	(Name of Ba	nk):				
Account Type:						
Account Number:						
Bank ACH Transfer	Number:		•			
Branch Address:			,			

Ticketmaster shall collect all Ticket Receipts derived from Ticket sales made by Ticketmaster and shall initiate payment of Ticket Receipts and Royalties to which Principal is entitled on Friday of each week with each weekly payment to be on account of TM System Ticket sales for Attractions made by Ticketmaster during Monday through Sunday of the week preceding such payment date. Initiation of the settlement payment via direct deposit shall constitute full performance by Ticketmaster of its obligation to make such settlement payment to Principal or to any person whatsoever. If funds to which Principal is not entitled are deposited into Principal's Account, Principal authorizes Ticketmaster to direct the Bank to return said funds. Principal hereby releases Ticketmaster from liability for delays or errors beyond Ticketmaster's reasonable control, including but not limited to any errors resulting from any inaccurate or outdated Account information provided by Principal or bank processing delays, or for any related damages. Principal acknowledges and agrees that direct deposit of such funds may require up to two (2) business days for Bank processing. In the event of an error, Principal also

Branch Phone Number: _

authorizes the initiation of a debit to Principal's Account to correct the error. Each weekly settlement payment shall be accompanied by a written accounting. Principal shall designate an email address (set forth below its signature line of this Agreement) for delivery of such accounting and information regarding Attractions and Ticket sales, and shall promptly notify Ticketmaster of any changes to such email address. The direct deposit authorization provided herein shall remain in full force and effect until Ticketmaster has received written notification from Principal of its termination in such time and such manner as to afford Ticketmaster a reasonable opportunity to act upon it.

- Cancelled Attractions: Refunds: In the event that any Attraction for which Ticketmaster sold Tickets is cancelled, postponed, or modified (e.g., substitute acts) for any reason (each, a "Cancelled Attraction"), the Account Balance shall be held and made available for distribution by Ticketmaster to Ticket purchasers entitled to refunds for Tickets for Cancelled Attractions purchased from Ticketmaster. For purposes of this Agreement, the term "Account Balance" shall mean the amount of funds held at any time by Ticketmaster on account of Ticket sales for all Attractions, less the amount of Ticket sales proceeds which Ticketmaster is entitled to retain hereunder. Principal authorizes Ticketmaster to refund the Ticket price at the original point of purchase (e.g., at Outlets or by Internet Sales or Telephone Sales) in such manner (e.g. by crediting the consumer's credit card) and at such time (e.g. before or after the scheduled date of the performance of such Attraction) as Ticketmaster, in its sole discretion, determines and to exchange Tickets pursuant to any exchange policy that may be adopted by Principal and Ticketmaster. It is agreed and understood that Ticketmaster is the Ticket seiling agent of Principal and therefore Ticketmaster's agreement to make any refunds as the agent of Principal is subject and limited to Ticketmaster holding or receiving from Principal the full amount of funds necessary to make refunds to all Ticket purchasers properly entitled to a refund. Principal and Ticketmaster agree that Ticketmaster shall be entitled to retain the Ticketmaster fees assessable with respect to the initial sale of Tickets to Cancelled Attractions. Principal shall be responsible for all refunds and exchanges of Tickets initially purchased from the Facility Box Office.
- Principal's settlement, portions of any Chargebacks that Ticketmaster is assessed by its merchant bank related to the Face Value, Processing Fee, Payment Processing Fees and any other amounts due from Ticketmaster to Principal for up to eighteen (18) months after the occurrence of an Attraction. Ticketmaster shall be responsible for the remaining portions of any Chargebacks, except to the extent caused by Principal's fallure to obtain signatures, swipe credit cards, or follow any procedures provided by Ticketmaster or the merchant bank with respect to acceptance of credit cards, including, but not limited to, cardholder verification instructions for will-call and other alternative Ticket delivery/pick-up services. For purposes of this Agreement, "Chargebacks" shall mean the amounts that the merchant bank is charged back by a cardholder or a card issuer under the card organization's rules (e.g., cardholder dispute, fraud, declined transaction, returned Tickets for Cancelled Attractions, etc.).
- (d) <u>Insolvency: Deficiency Amounts: Security for Repayment:</u>
 Principal shall provide immediate written notice to Ticketmaster in the event it files any voluntary or involuntary petition under the bankruptcy or insolvency laws or upon any

appointment of a receiver for all or any portion of Principal's business or the assignment of all or substantially all of the assets of Principal for the benefit of creditors (each, a "Material Financial Event"). The parties agree that this Agreement constitutes a financial accommodation by Ticketmaster to Principal as such term is utilized in 11 U.S.C. §365. If at any time, the Account Balance is not sufficient to pay for anticipated refunds or Chargebacks, Principal shall deliver the amount of such deficiency ("Deficiency Amount") to Ticketmaster no later than twenty-four (24) hours after notice by Ticketmaster to Principal. Ticketmaster shall have the right to setoff any Deficiency Amount against any amounts held by Ticketmaster on behalf of Principal. In the event of any Material Financial Event or in the event Principal has not paid any Deficiency Amount when due. Ticketmaster shall have the option to (i) require Principal to provide additional security to Ticketmaster of a type (e.g., letter of credit, guaranty or performance bond) and in an amount as requested by Ticketmaster in its sole discretion, which Principal shall provide to Ticketmaster within five (5) business days after Ticketmaster's request, and/or (ii) suspend payment of Ticket Receipts in advance of the occurrence of Attractions and instead deliver Ticket Receipts to which Principal is entitled post-performance (i.e., Friday of each week with respect to Attractions that occurred during Monday through Sunday of the week preceding such payment date). Ticketmaster reserves the right to require Principal to provide current financial statements or other financial information to Ticketmaster within five (5) business days after Ticketmaster's written request.

- (e) <u>Counterfeit Tickets</u>: It is agreed and understood that Ticketmaster shall not be liable to Principal for the printing and sale of counterfeit Tickets, including, without limitation, TicketFast Tickets.
- (f) Audit of Sales: At all times during the Term of this Agreement, (i) Principal shall have the right at its own expense to audit Ticket sales for Attractions by Ticketmaster to assure Ticketmaster's compliance with the terms of this Agreement, and (ii) Ticketmaster shall have the right at its own expense to audit Ticket sales for Attractions made by Principal and by others (including, without limitation, the promoter and sponsor of any Attraction, the act or event itself and Principal's Subscribers) to assure their compliance with the terms of this Agreement.
- (g) <u>Request for Taxpayer Identification Number and Certification</u>: Principal shall complete the required Form W-9 provided with this Agreement and return it to Ticketmaster with this Agreement for purposes of reporting to the Internal Revenue Service.

9. TAXES:

(a) <u>Taxes on Hardware</u>: Principal shall keep the Hardware free and clear of all levies, liens and encumbrances which are caused by Principal or under Principal's control and shall promptly reimburse Ticketmaster for all license fees, registration fees, assessments, charges and taxes, whether federal, state, county, municipal or other governmental or quasi-governmental, with respect to the Hardware located at the Facility, including, without limitation, use, excise and property taxes, and penalties and interest with respect thereto, except and excluding, however, any taxes based on or measured solely by Ticketmaster's net income.

- Attraction Taxes: Principal shall be responsible for calculating any and all Principal Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Principal Taxes, and for timely remitting Principal Taxes to the appropriate taxing authority. Ticketmaster will collect and turn over to Principal the amounts to which Principal is entitled as provided in Section 8(a). In the event that Ticketmaster pays any Principal Taxes on behalf of Principal or Ticketmaster pays any Principal Taxes due to a failure by Principal to provide Ticketmaster with the required writing or documentation of any Principal tax exemptions pursuant to Section 9(d) below. Principal shall promptly reimburse Ticketmaster for any and all such Principal Taxes paid by Ticketmaster, including penalties and interest assessed with respect thereto (other than Principal Taxes, penalties and interest that Ticketmaster pays directly out of Principal's Ticket Receipts), and shall also promptly reimburse Ticketmaster for any and all expenses (including reasonable attorneys' fees) or damages that result from the failure by Principal to properly calculate and timely remit Principal Taxes assessed on all amounts received by Principal under this Agreement, to timely file all related returns or reports, or to timely reimburse Ticketmaster for any and all such Principal Taxes, interest and penalties as provided above. Notwithstanding the foregoing, in the event that Ticketmaster is ever required by applicable law to remit Principal Taxes directly on behalf of Principal and file related tax returns or reports, Ticketmaster shall have the right to do so upon notice to Principal, and thereafter "Ticket Receipts" shall be defined to be reduced by such Principal Taxes. Tickelmaster shall be responsible for calculating any and all Ticketmaster Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Ticketmaster Taxes, and for timely remitting such Ticketmaster Taxes to the appropriate taxing authority.
- (c) <u>Principal's Taxpayer ID Number</u>: Principal certifies that Principal's federal taxpayer identification number (FEIN or SSN) is <u>SS-Looo842</u>. Principal further certifies that its state taxpayer identification or registration number for the state in which the Facility is located is ______
- (d) <u>Principal's Tax Exemptions</u>: Principal shall notify Ticketmaster in writing of any and all Principal tax exemptions (if applicable) and provide Ticketmaster with reasonable proof of Principal's tax exemptions.

10. LOSS AND DAMAGE TO THE HARDWARE; INSURANCE:

(a) Principal acknowledges that the Hardware will be used by Principal at the Facility and that Ticketmaster does not own, operate or control such location. Accordingly, Principal hereby assumes and shall bear the entire risk of loss and damage to the Hardware, ordinary wear and tear excepted, whether or not insured against, once installed, unless occasioned by the negligence or willful misconduct of Ticketmaster, from any and every cause whatsoever from the date of delivery of the Hardware to the Facility or Principal site until removal thereof following termination of this Agreement. No such loss or damage to the Hardware shall impair any obligation of Principal under this Agreement. In the event of loss or damage of any kind to any Hardware, Principal, at its sole option, shall within thirty (30) days after such loss or damage:

- (i) Place the same, or replace the same with similar property, in good repair, condition and working order to the satisfaction of Ticketmaster; or
- (ii) Pay Ticketmaster in cash the full replacement cost of the Hardware, and Ticketmaster shall promptly install new hardware to replace the lost or damaged Hardware.
- (b) Principal shall, at its own expense, provide and maintain at all times during the Term hereof insurance to protect the Hardware against loss caused by fire (with extended coverage), vandalism, malicious mischief, theft, or any other cause in an amount equal to the full replacement value of the Hardware as determined by Ticketmaster. The Insurance required to be maintained by Principal hereunder may be carried under a plan of self-insurance, provided that Principal provides adequate documentation thereof. In the event Ticketmaster reasonably determines Principal has failed to meet such self-insurance requirements Principal will immediately obtain an insurance policy in the State of West Virginia for insurance coverage required of Principal herein.

11. <u>TITLE</u>:

Hardware/Software: Principal covenants and agrees that the Software and Hardware and any deliverables or work product furnished under this Agreement are, and shall at all times be and remain, personal property which shall, at all times, remain the sole and exclusive property of Ticketmaster, and Principal shall have no right, title or interest therein or thereto except as a licensed user thereof. Principal acknowledges and agrees that Ticketmaster has invention rights, copyrights, and other intellectual property rights in the TM System and the information contained therein which prohibit copying, sale, modification and re-manufacture of the TM System and information regarding the TM System and which will be enforced. Principal hereby agrees that it will, whenever reasonably requested by Ticketmaster, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, agreements, instruments, and documents necessary or desirable, in form satisfactory to Ticketmaster, to protect the rights and ownership of Ticketmaster to and of the Software and Hardware, including but not limited to certificates from parties with a real property interest in the premises wherein the Hardware may be located waiving any claim with respect to the Hardware. Except as may be necessary to prevent damage to or destruction of the Hardware, Principal will not move the Hardware nor permit such Hardware to be moved without Ticketmaster's prior written consent, which consent shall not be unreasonably withheld, and shall give Ticketmaster prompt written notice of any attachment or other judicial process affecting any item of Hardware. Upon the expiration or termination of this Agreement, Principal shall return the Software and Hardware to Ticketmaster in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted. and any and all licenses and other rights to the Software and Hardware shall terminate with respect to Principal.

- Intellectual Property: Each party shall retain all right, title and interest in and to its respective trademarks, service marks and trade names worldwide ("Intellectual Property") subject to a limited non-exclusive, non-transferable license necessary to perform this Agreement. Each party grants the other a license fee free, nonexclusive, non-transferable license, during the Term, within the territory, to include such party's pre-approved Intellectual Property solely in connection with the promotions and marketing contemplated in this Agreement. Initial use of Principal's Intellectual Property is subject to the review and approval in advance by the Principal's Office of Trademark Licensing, Approval requests must be sent to trademarklicensing@mail.wvu.edu. Such review and approval shall not be unreasonably withheld or delayed. Each party shall use the other's Intellectual Property only as provided, and shall not alter the Intellectual Property in any way, nor shall it act or permit action in any way that would impair the rights of owning party in its Intellectual Property. Each party acknowledges that its use of the other party's Intellectual Property shall not create any right, title or interest in or to such Intellectual Property. Each party shall have the right to monitor the quality of the other party's use of its Intellectual Property. Additionally, each party shall notify the other promptly in writing of any known infringement of the other's Intellectual Property. Any references to a party's Intellectual Property shall contain the appropriate trademark, copyright or other legal notice provided from time to time by owning party.
- Purchaser Data: Principal and Ticketmaster each has rights in the personally identifiable information with respect to persons who actually purchased tickets to Principal's Attractions through the TM System (whether by outlets, Telephone Sales or Internet Sales) ("Purchaser Data"), subject to the terms hereof. Such use by Ticketmaster may include, without limitation, in development of new or upgraded Software at Principal's request, or for general market research on pricing when used in aggregate form with other Ticketmaster client consumer data. Each party agrees to use the Purchaser Data only in compliance with all applicable laws and administrative rulings and in accordance such party's own posted privacy policies. Principal agrees that if any portion of the Purchaser Data includes a person's name and that person's (i) social security number; (ii) driver's license or government identification number; or (iii) password and account identification, then Principal shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Purchaser Data to protect the Purchaser Data from unauthorized access, destruction, use, modification or disclosure. Principal also agrees that if any portion of the Purchaser Data includes credit or debit card numbers and related information. Principal shall comply with payment card industry standards. Principal shall also include in any email communications that Principal may make based on the Purchaser Data a mechanism to provide the recipient with the right to "opt-out" from receiving further communications from Principal and Principal shall honor such optout preferences.

12. CONFIDENTIAL INFORMATION:

(a) The parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose information regarding their business, products, software technology, Intellectual Property and other information that is confidential and of substantial value to the other party, which value would be impaired if

such information were disclosed to third parties ("Confidential Information"). The provisions of this Agreement shall be deemed to be Confidential Information.

- (b) Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in this Agreement by the receiving party, (ii) is or has been independently acquired or developed by the receiving party without violating any of the confidentiality obligations in this Agreement, (iii) was within the receiving party's possession prior to it being furnished to the receiving party by or on behalf of the disclosing party, or (iv) is received from a source other than the disclosing party; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving party to be bound by a confidentiality obligation to the disclosing party or any other party with respect to such information.
- (c) Each party agrees that it will keep the Confidential Information strictly confidential and will not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other party without the other party's prior written consent, except to the extent expressly permitted by this Agreement; provided, however, that the receiving party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entities who need to know such Information to perform such party's obligations under this Agreement and who agree to treat the Confidential Information in accordance with the confidential obligations in this Agreement. Each party shall use the same degree of care to avoid disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance and represents that it has adequate procedures to protect the secrecy of such Confidential Information including without limitation the requirement that employees have executed non-disclosure agreements which have the effect of adequately protecting Confidential Information.
- (d) In the event that either party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, document request, notice of deposition or other legal proceeding, such party agrees to notify the other pursuant to Section 17(h) below, within forty-eight (48) hours after receipt of such legal document, and such party agrees to cooperate with the other in any attempt to obtain a protective order.
- 13. <u>LIMITATION ON LIABILITY</u>: In no event shall Ticketmaster be liable for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits, lost savings, lost or destroyed data, lost ticket revenues, lost opportunity costs or any other economic loss, of any type or nature, or for events or circumstances beyond Ticketmaster's control, even if Ticketmaster has been advised of the possibility of such damages. Neither occasional short term interruptions of service which are not unreasonable under comparable industry standards nor interruptions of service resulting from events or circumstances beyond Ticketmaster's reasonable control shall be cause for any liability or claim against Ticketmaster hereunder, nor shall any such occasion render Ticketmaster in default under this Agreement.

14. RESPONSIBILITIES OF THE PARTIES:

- Principal shall be responsible for any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations. losses, liabilities and liens, imposed on, incurred by, or asserted against Ticketmaster occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Principal or any of its officers, directors, employees and agents (collectively, "Principal's Representatives"); (ii) use of the TM System (including without limitation any customization of Principal's Website or the Interface Page (if applicable) and any e-mall campaigns or distributions using the TM System) or possession and use of the Hardware (if any) by Principal or any of Principal's Representatives; (iii) any Attraction held or scheduled to be held at the Facility (including any injuries or deaths occurring at or in connection with any Attraction or the failure of any Attraction to occur or to occur in the manner advertised or promoted); (iv) a claim that Ticketmaster's release of the Purchaser Data to Principal violates any applicable law, rule or regulation; (V) Principal's use of the Purchaser Data; (vi) violations of laws relating to the resale of Tickets; or (vii) any email campaigns or distributions conducted by Ticketmaster on Principal's behalf or conducted by Principal including, without limitation, email campaigns or distributions in violation of federal, state or other laws applicable to commercial emails; except, in each case, to the extent that any such claims shall relate to Ticketmaster's negligence or willful misconduct with respect thereto.
- (b) Ticketmaster shall be responsible for any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against, Principal occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Ticketmaster; or any of its officers, directors, employees and agents or (ii) any alleged patent, trademark or copyright infringement asserted against Principal with respect to Principal's use of the TM System; except, in each case, to the extent that any such claim shall relate to Principal's negligence or willful misconduct with respect thereto.
- (c) Each party must notify the other party promptly in writing of any claim for which the other party is responsible hereunder, and provide, at such other party's expense, all reasonably necessary assistance, information and authority to allow the other party to control the defense and settlement of such claim.

15. **TERMINATION**:

(a) This Agreement may be terminated by either party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other party, after the other party has received written notice of default and thirty (30) business days (or ten (10) business days, in the case of a monetary default) to cure such default (each such occurrence, after the expiration of such cure period, shall be an "Event of Default"); or the filing of any voluntary or involuntary petition against the other party under the bankruptcy or insolvency laws of any applicable jurisdiction, which petition is not dismissed within sixty (60) days of filing, or upon any appointment of a receiver for all or any portion of the other party's business, or any assignment of all or substantially all of the assets of such other party for the benefit of creditors. Upon an Event of Default

by Ticketmaster, Ticketmaster shall, without demand, forthwith pay to Principal all amounts due and owing pursuant hereto, and Principal may, in addition to terminating this Agreement, require Ticketmaster to remove all Hardware from the Facility. Upon an Event of Default by Principal, Principal shall, without demand, forthwith pay to Ticketmaster all amounts due and owing pursuant hereto, and Principal authorizes Ticketmaster to setoff any amounts owed to Ticketmaster hereunder against any amounts held by Ticketmaster on behalf of Principal, and Ticketmaster may, in addition to terminating this Agreement, terminate Principal's right to access and use the TM System and take possession of the Hardware and Software wherever the same may be located upon providing notice of repossession to Principal.

- (b) This Agreement may be terminated on ten (10) days' prior written notice, at the sole discretion of Ticketmaster in the event that more than 50% of Principal's assets or voting stock is sold or otherwise assigned to a third party.
- (c) This Agreement may be terminated by either party in the event any act by either party threatens to cause any infringement of any of the other party's intellectual property or other property right, including without limitation, any copyright, license right or trade secret right, and the defaulting party fails to refrain from so acting within ten (10) business days' written notice from the non-defaulting party.
- (d) Upon the effective date of any termination or expiration of this Agreement, provisions regarding ownership of intellectual property rights, representations and warranties, confidentiality, responsibilities of the parties, limitation of liability, non-solicitation, jurisdiction and venue shall remain in full force and effect; each party shall immediately cease the use of the other party's intellectual Property; and each party shall return, or at the other party's request, destroy all copies of Confidential Information, and all other property belonging to and/or received from the other party.
- (e) No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy herein or otherwise available at law or in equity, each and all of which are subject to the limitations contained in Section 13 hereof.
- 16. <u>DEFINITIONS</u>: As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

"AccessManager" means the Ticketmaster AccessManager software which interfaces with the TM System to facilitate certain reporting systems and to provide various enhanced services to the patron admissions process through the use of bar codes or other media printed on Tickets.

"Attraction" means a concert, sporting, entertainment or other act or event of any kind or nature whatsoever to be held at the Facility.

"Attraction Taxes" means any and all sales, amusement, admissions and other taxes, charges, fees, levies or other assessments measured by reference to a charge per Ticket sold or determined based upon the purchase price of a Ticket assessed by federal,

state, county, municipal or other governmental or quasi-governmental authorities as a result of, or in connection with, any Attraction, including Principal Taxes and Ticketmaster Taxes as further described below. To the extent such taxes relate to the funds paid or owed to Principal under this Agreement such portion of Attraction Taxes may also be referred to herein as Principal Taxes, and to the extent such taxes relate to portions of service charges (e.g. Convenience Charge, Processing Fee, etc.) collected and retained by Ticketmaster under this Agreement, such portion of Attraction Taxes may also be referred to herein as Ticketmaster Taxes.

"Chargebacks" is defined in Section 8(c) hereof.

"Confidential Information" is defined in Section 12 hereof.

"Contract Year" is defined in Section 1 hereof.

"Convenience Charge" means the per Ticket amount charged by Ticketmaster to a consumer for the convenience of purchasing Tickets through the TM System.

"Event of Default" is defined in Section 15(a) hereof.

"Face Value" means the face price of a Ticket as determined by Principal, which shall be inclusive of all applicable Attraction Taxes and facility, parking and similar fees.

"Facility" means any venues owned, controlled, operated or managed by Principal, directly or indirectly through one or more affiliates, or where Principal otherwise controls the rights or has the authority to sell tickets to any event, including, but not limited to the Metropolitan Theatre located at 369 High St, Morgantown, WV 26505, as well as the venue(s) located within West Virginia University in Morgantown, West Virginia, 26506 and currently known as the WVU Coliseum, the WVU Creative Arts Center, the Morgantown Metropolitan Theatre, the Morgantown Event Center, and the WVU Mountainlair Ballroom.

"Facility Box Office" means the Facility's Ticket sales locations that are operated by Principal and located at the Facility.

"Group Sales" means sales of Tickets by Principal to a group consisting of at least fifteen (15) people for use by the group members to attend an Attraction as a group. In no event shall Group Sales consist of the sale of Tickets to individuals to attend an event separately or for individuals to purchase Tickets with the intent to resell such Tickets.

"Hardware" means all of that certain computer hardware, communications equipment, terminals and hook-ups (including replacements thereof) listed with particularity on Exhibit B or otherwise supplied by Ticketmaster to Principal at any time during the Term of this Agreement, but excluding (i) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal to provide the connectivity to and interfacing with the TM System required under this Agreement, and (ii) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal from Ticketmaster.

17

"House Seats" means Tickets provided by Principal (i) to the Attraction's promoter, performing act or event, or their managers or agents (i.e. band holds); (ii) for distribution through legitimate fan clubs in accordance with current guidelines (i.e. fan club holds); or (iii) for legitimate promotional purposes (e.g. radio station promotions); provided that House Seats Tickets shall not be distributed to the general public.

"Inside Charges" means the amounts Ticketmaster charges Principal to sell, issue and process Tickets utilizing the TM System under this Agreement.

"Intellectual Property" is defined in Section 11(b) hereof.

"Internet Sales" means all sales of Tickets over the Internet.

"License" is defined in Section 4(a) hereof.

"Outlet" means a retail Ticket selling agency (other than the Facility Box Office) where Tickets for an Attraction are made available and offered for sale to the public through the TM System.

"Payment Processing Fees" is defined in Section 3(b).

"Principal's Website" means an Internet website(s) owned, operated and maintained by Principal.

"Processing Fee" means the per order amount charged by Ticketmaster to a consumer for purchasing Tickets via Internet Sales or Telephone Sales through the TM System.

"Purchaser Data" is defined in Section 11(c) hereof.

"Royalties" is defined in Section 3(c)(i) hereof.

"sale and sell" and any derivations thereof in this Agreement shall include any distribution for consideration, by any means or method (including without limitation, on the Internet or by auction) and shall include resales.

"Season/Contract Tickets" means specifically designated Tickets sold directly by Principal on an annual basis across all Attractions or across all of a category of Attractions (i.e., luxury suites, club level seats and season tickets).

"Sellable Capacity" means the admission capacity of the Facility for any particular Attraction.

"Software" means Ticketmaster's ticketing system software known and marketed as Ticketmaster Classic, AccessManager, TM Charge, TM+, and any new versions thereof or any other deliverables for TM System access provided to Principal by Ticketmaster during the Term.

18

"Telephone Sales" means all sales of Tickets through the TM System by telephone, interactive voice response (IVR) and similar means.

"Term" is defined in Section 1 hereof.

"Ticket" means a printed, electronic or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an Attraction or Attractions even if not evidenced by any physical manifestation of such right, such as a "smart card", including, without limitation, tickets printed via TicketFast print-at-home technology.

"TicketFast®" means the TM.com Website method of Ticket delivery which allows purchasers to print Tickets from a computer.

"Ticket Receipts" means the Face Value of a Ticket sold by Ticketmaster less any applicable Inside Charges, Payment Processing Fees or Ticketmaster Taxes, and less any Principal Taxes if Ticketmaster is required to remit Principal Taxes to any taxing authority.

"TM Charge" means the electronic payment processing system within the TM System that utilizes the global banking association networks to authorize electronic payment for purchases of Tickets to Attractions sold by Principal from the Facility Box Office as permitted under this Agreement.

"TM.com Website" means any Internet websites owned, operated and maintained by Ticketmaster, including, without limitation, any co-branded versions and any version distributed through any broadband distribution platform or through any platform or device including television, broadband and wireless technologies.

"TM System" means the Hardware, Software, TM.com Website, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, distributing, auditing and controlling the sale of Tickets for Attractions, including, without limitation, at Outlets, by Internet Sales, by Telephone Sales and the processing of transactions through the Software.

17. MISCELLANEOUS:

(a) Governing Law/Jurisdiction: This Agreement shall be interpreted and governed by the laws of the State of West Virginia, without reference to conflict of laws principles. Each of the parties hereto agrees that the state courts, and the United States federal courts, that are located in the State of West Virginia shall each have subject matter jurisdiction hereunder and personal jurisdiction over each of the parties hereto. Each such party hereby consents thereto, and hereby waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent that any proceeding is conducted in accordance with the foregoing provision.

- (b) <u>Waiver of Jury Trial</u>: In the event the parties are required for any reason to submit any dispute hereunder to trial, the parties expressly agree to waive the right to a jury trial, because the parties hereto, all of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.
- (c) Entire Agreement: Modification: This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all previous oral or written communications, proposals, agreements, and commitments. No modification to this Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. A party's delay in enforcing its rights hereunder shall not be construed as a waiver of such rights or remedies.
- Assignment: Without the prior written consent of Ticketmaster, Principal shall not (i) directly or indirectly assign, transfer, pledge or hypothecate its rights or obligations in this Agreement or any interest therein; or (ii) permit the Hardware (if any) or any part thereof to be used, or access to the Software or any part thereof to be had. by anyone other than Principal or Principal's authorized employees. Any such assignment shall not relieve Principal of any of its obligations hereunder. Without the prior written consent of Principal, Ticketmaster shall not assign or transfer its rights or obligations in this Agreement or any interest therein, except in the event of an assignment by Ticketmaster to any parent, subsidiary, affiliate or successor-in-interest (including, without limitation, a successor by virtue of an acquisition), in which event no such consent shall be required. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void. Notwithstanding the foregoing, Principal agrees and acknowledges that certain of Ticketmaster's duties and obligations under this Agreement may be performed on Tickelmaster's behalf by one or more of its parent, subsidiaries and affiliates, and no such performance shall be deemed to be an assignment or breach of this Agreement by Ticketmaster.
- (e) <u>Relationship of the Parties</u>: Each party is an Independent contractor and not an agent or partner of, or joint-venturer with, the other party for any purpose other than as set forth in this Agreement (e.g., Ticketmaster is the agent of Principal with respect to ticket sales and distribution). Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.
- (f) <u>Delays</u>: Neither party shall be liable or deemed in default, and no Event of Default shall be deemed to have occurred, as a result of any delay or failure in performance of this Agreement resulting directly or indirectly from any cause completely, solely and exclusively beyond the control of that party, but only for so long as such delay shall continue to prevent performance.
- (g) <u>Severability</u>: If any provision of this Agreement is found to be invalid or unenforceable in any jurisdiction (a) the validity or enforceability of such provision shall not in any way be affected with respect to any other jurisdiction, and the validity and

enforceability of the remaining provisions shall not be affected; and (b) the parties shall replace such provision by one or more valid and enforceable provisions approximating the original provision as closely as possible.

- (h) <u>Notices</u>: Any notices required to be given under this Agreement must be sent to each party, in writing, at the address set forth immediately below the signature line hereto or at such address as may be provided by each party in writing from time to time, by certified or registered mail, return receipt requested or by an overnight courier. Notices will be deemed effective the day following sending if sent by overnight courier or five days after sending if sent by certified or registered mail. Settlement reports may be delivered from Ticketmaster to Principal by email; therefore Principal shall promptly notify Ticketmaster of any change to its email address set forth immediately below the signature line hereto.
- (i) <u>Binding Agreement/Counterparts</u>: The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement shall not be binding until executed by each of the parties. This Agreement may be executed in multiple counterparts which when taken together constitute a single instrument.
- (j) <u>Legat Review</u>: Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. The parties expressly agree that the construction and interpretation of this Agreement shall not be strictly construed against the drafter.
- (k) <u>Attorneys' Fees</u>: In addition to any other rights hereunder, the substantially prevailing party, as a court of competent jurisdiction (as provided above) may determine, in any claim or other dispute which relates to this Agreement, regardless of whether such claim or other dispute arises from a breach of contract, tort, violation of a statute or other cause of action, shall have the right to recover and collect from the other party its reasonable costs and expenses incurred in connection therewith, including, without limitation, its reasonable attorneys' fees. If a party substantially prevails on some aspects of such claim or dispute but not others, the court may apportion any award of costs or attorneys' fees in such manner as it deems equitable.
- approval for Principal to be listed as a Ticketmaster client in monthly newsletters for distribution to event industry clients, in product boiler plate information, and in future releases about Ticketmaster products and services for distribution to trade and consumer media. At any time, Principal may, in its sole discretion, direct Ticketmaster to stop using Principal's name for the purposes listed in this Section by sending notice to Ticketmaster via email at client.news@ticketmaster.com.
- (m) <u>Survival of Terms</u>: Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including without limitation provisions related to use of the Software,

purchaser data, limitations on liability, responsibilities of the parties, confidential information, governing law and waivers of jury trials, shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, Ticketmaster and Principal have caused this Licensed User Agreement to be duly executed as of the date set forth below.

TICKETMASTER L.L.C., a Virginia limited liability company

Print Name Geoff Carns

Title: SVP, Venues & Promoters

Date: 8-12-16

Address:

Ticketmaster L.L.C.

7060 Hollywood Blvd. Hollywood, CA 90028

Attn:

SVP, Venues & Promoters

University of West Virginia Board of Trustees on behalf of West Virginia University

By: In her

Print Name: David Beaver

Title: *CPO*

Date: 8/10//4

Address: PO Box 6201

Morgantown, West Virginia 26506

Emall address: abeau @ wil. www. eDo

With a copy to:

Ticketmaster L.L.C. 150 North Orange Ave, Suite 301

Orlando, FL 32801

Attn:

Manager - Client Development

and with a copy to:

Ticketmaster L.L.C. 7060 Hollywood Boulevard

2nd Floor

Hollywood, CA 90028

Attn:

General Counsel

EXHIBIT A

COMPENSATION

1. Ticketmaster Charges and Fees.

(a) Convenience Charge (Per Ticket):

Type/Face Value of Ticket	Convenience Charge - Telephone Sales, Internet Sales and Outlet Sales
Student Tickets (all Face Values)	\$2.00 per Ticket
Non-Student Tickets with the following Face Values:	
	\$2.25 per Ticket* \$2.50 per Ticket* \$2.75 per Ticket* \$3.00 per Ticket* \$3.50 per Ticket* \$4.00 per Ticket* \$4.50 per Ticket* \$5.00 per Ticket*

^{*}Each of the Convenience Charges for Non-Student Tickets set forth above shall be subject to automatic increase on the first day of the third (3rd) Contract Year and on the first day of every other Contract Year thereafter during the Term in the amount of \$0.25 per Ticket.

(b) Processing Fee (Per Order):

Type of Sale	Processing Fee	
Outlet sales	For all Tickets: \$0,00 per order	
Telephone Sales and Internet	 For Non-Student Tickets: \$3.00 per order* 	
Sales	For Student Tickets: \$3.00 per order	

^{*}The Processing Fees for Telephone Sales and Internet Sales set forth above for Non-Student Tickets shall be subject to (i) automatic Increase on the first day of the third (3rd) Contract Year and on the first day of every other Contract Year thereafter during the Term in the amount of \$0.25 per order, and (ii) additional automatic increase equal to any increase (rounded up to the nearest \$0.05) to the postal service rates.

(c) Inside Charges:

Type of Sale	Inside Charge per Ticket	Inside Charge per order
Outlet sales, Telephone Sale and Internet Sales	For all Tickets: \$0.00 per Ticket	For all Tickets: \$0.00 per order
Complimentary Tickets printed by or on behalf of Principal	For all Tickets: \$0.00 per Ticket	For all Tickets: \$0.00 per order
Other Tickets (excluding complimentary Tickets) printed by or on behalf of Principal	For all Tickets: \$0.05 per Ticket	For all Tickets; \$0.00 per order

- (d) Mail Fee. Ticketmaster shall be entitled to assess and receive a fee in the amount of \$2.25 per order against purchasers of Tickets using the U.S. mail method of delivery (the "Mail Fee"). The Mail Fee is subject to automatic increase equal to any increases (rounded up to the nearest \$0.05) to the postal rates. Principal may elect to increase the Mail Fee by an additional amount not to exceed \$2.25 per order, and Principal shall retain the entirety of such additional amount for each Mail Fee received (and not refunded) by Ticketmaster, less applicable taxes or credit card fees (calculated at the same rate for credit card transactions as set forth in the Agreement) on such additional amount.
- (e) <u>ticketFast and Mobile Delivery Fee</u>. Ticketmaster shall not assess any ticketFast delivery fee or mobile delivery fee against purchasers of Tickets using the ticketFast or mobile methods of delivery.

2. Payment Processing Fees:

Type of Sale	Percentage Rate
Telephone Sales and Internet Sales	2.55% of Face Value of Tickets
Outlet Sales	2.63% of Face Value of Tickets
Principal Sales using TM Charge	2.55% of Face Value of Tickets

Any percentage rates set forth above are subject to automatic increase due to increases in the interbank rates imposed on Ticketmaster.

3. Compensation to Principal.

(a) Principal's Royalties:

Production and account of the second of the	
Type of Royalty	Amount of Royalty

Convenience Charge	15% of the Convenience Charge; provided Principal shall only be entitled to such Royalties for Non-Student Tickets sold with a Face Value of \$10.00 and above.
Processing Fee 15% of the Processing Fee	

EXHIBIT B

HARDWARE

1. Facility Box Office Hardware - WVU Coliseum/Mountainlair Ballroom

Quantity	Description
Quantity 12	Point of Sale Set-ups (Thin Client, Monitor, Keyboard,
	Credit Card Swiper)
12	Boca Ticket Printers
1	Cisco Router
2	Cisco Ethernet Switches

2. AccessManager Hardware - WVU Coliseum/Mountainlair Ballroom

Description
AccessManager Server Kits (Server, Monitor, UPS,
Keyboard/Mouse)
Janam XM 66 Scanner Packages with accessories
(Magnetic strip reader, charger, cradles and spare
batteries)
Paperless kits
Wireless Access Point and mount kits

3. Hardware - Metropolitan Theatre

Quantity	Description
2	Point of Sale Set-ups (Thin Client, Monitor, Keyboard
	Credit Card Swiper)
2	Boca Ticket Printers
4	Janam XM70 Scanner Kits

EXHIBIT C

TM+ TERMS AND CONDITIONS

Ticketmaster shall enable TM+ for all Attractions, subject to available restrictions established by Principal including timing of activation or price floors and caps on any secondary market ticket inventory available through TM+, in accordance with the settlement terms set forth in this Exhibit C below.

TM+ Settlement Terms

- For any primary market ticket inventory sold through TM+, Ticketmaster shall
 continue to sell such tickets and settle the proceeds of such sales with Principal in
 accordance with the terms and conditions for such transactions as set forth in the
 Agreement.
- For any secondary market ticket inventory sold through TM+, Ticketmaster shall assess its standard fees against the buyers and sellers of such tickets in amounts as determined by Ticketmaster, which amounts currently include: (i) a seller fee generally in an amount up to twelve percent (12%) of the ticket posting price (i.e., the price set by the seller upon posting such ticket for sale), and (ii) a buyer fee generally in an amount up to fifteen percent (15%) of the ticket listing price (i.e., the posting price <u>plus</u> the seller fee), with a \$5.00 minimum.
 - Principal shall be entitled to receive from Ticketmaster ten percent (10%) of the Net Resale Fees collected (and not refunded or subject to chargeback) by Ticketmaster on account of Principal's secondary market ticket sales through TM+ (the "TM+ Revenue Share").
 - o For purposes of this Exhibit C, "Net Resale Fees" shall be defined as the gross amount collected from the new purchaser of a secondary market inventory ticket via TM+ less (i) the proceeds paid to the ticket seller, (ii) an amount equal to 3.5% of the gross amount collected from the new purchaser (to cover credit card processing fees), and (iii) any applicable sales, admission or similar tax.
 - o The TM+ Revenue Share will be paid to Principal on a quarterly basis for all such sales occurring in any calendar quarter, on or before the thirtieth (30th) day of the month following each calendar quarter. In the event that any Attraction for which Ticketmaster has made any TM+ Revenue Share payment to Principal becomes a Cancelled Attraction, Principal shall promptly repay to Ticketmaster the amount of such TM+ Revenue Share payments in respect of such Cancelled Attraction.
 - Each settlement relating to the TM+ Revenue Share pursuant to this <u>Exhibit</u>
 <u>C</u> shall be accompanied by a report of the applicable transactions during such settlement period.

WV-96A Rev. 12/12

AGREEMENT ADDENDUM FOR SOFTWARE

In the event of conflict between this addendum and the agreement, this addendum shall control:

- DISPUTES. Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
- HOLD HARMLESS Any provision requiring the Agency to independity or hold his miless any party is hereby detected in its enthety.
- GOVERNING. LAW The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
- TAXES Provisions in the agreement requiring the Agency is pay laxes are deleted. As a State early, the Agency is exampt from Federal, State, and local laxes and will any pay taxes for any venidor including right had a, not will the Agency file any pay returns of regume on behalf of Vendor or any other party.
- PAYMENT. Any references in prepayment are deleted. Fees for software licenses, substriptions, or maintenance are payable annually in advance. Payment for services will be in arrears. 5,
- INTEREST Any provision for interest or charges on late payments is deletted. The Agency has no stabutory authority to pay interest or tale feet. 6.
- NO WAIVER Any language in the agreement requiring the Agency to waive any rights, claims or delenges is hereby deleted.
- PISCAL YEAR FUNDING. Sorvice performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Lie gislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service. The agreement becomes of no effect and any wild and vold. However, the Agency agrees to use its best efforts to have the appropriated under the agreement racing the hinget. Non-appropriation or non-funding shall not be considered an event of default.
- STATUTE OF LIMITATION Any clauses limiting the time in which the Agency may bring still against the Veridor, least, individual, or any other party we deleted.
- SIMILAR: SERVICES Any provisions limiting the Agency's right to obtain similar services of equipment in the preprior deficult or non-funding day learn of the agreement are hereby defends. 10.
- 11.
- THES OR CISTS The Apopt recognizes an obligation to payalthings a feet of costs only when assessed by a council composed prize of the contract and the representation of the contract of the contract and contract of the appropriate of the contract of the c
- LIMITATION OR LIABILITY The Agency, as a State entity, cannot agence to assume the potential liability of a Vendor. Accordingly, any provision in the agreement fluiding the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, including the consequential damages are acceptable. In addition, any limitation is sail and void to the extent that it precludes any action for injury to personally for damages to personal property.
- RIGHT TO TERMINATE Agency that have be right to tempinate the effection open thing (30) days well consoling to tender. Agency ag
- TERMINATION CHARGES. Any provision requiring the Acenty to pay a fixed amount or liquidated names upon termination of the appearant is hereby deleted. The Agency may only agree to reimbure a Vendor for square does income do lesses sustained during the current lightly wrongful termination by the Agency pilor, to the end of any current agreement terms.
- Iscal year docto wrongful termination by the Agency prior, to the can be any control of the parties of the part 17.
- RIGHT: TO NOTICE Any provision for repossession of equipment without notice is hereby delated. However, the Agency dues recognize a right of repossession with notice. 18.
- 19.
- ACCELERATION Any reference to acceleration of payments in the avent of default or non-funding is hereby deleted.

 CONFIDENTIALITY Any provision regarding confidendiality of the terms and conditions of the agreement the west vinging regarding to information Act. The Agency Shall provide Vendor with notice of any replaced in the provide vendor with notice of any approved by the regarding vendors confidential thrity nutrition.

 All intendments, including their, alterations, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addecadum without the express written approved of the Purchasing Division and the Attories Control.
- 21.

ACCEPTED BY: WEST VIRGINIA UNIVERSITY	VENDOR
Procurement Dept: PCP 5	Company Names Ticke bass ter L.L.C.
Signeti: Land Man-	Stored Cant
Titter CP 0	Title:
Dote: 8/10/16	Date: 8.12-16



Procurement Contracting & Payment Services
One Waterfront Place / 3rd Floor / Don Knotts Blvd
PO Box 6024
Morgantown WV 26506
Ph: 304-293-5711

Visit WVU PCPS on the internet: http://pcps.wvu.edu

Number:

U19FEVO

Please show this number on all packages and documents related to this Order.

Vendor: Host Committee, Inc. d.b.a. Fevo 373 Park Avenue South 5th Floor New York, NY 10016		Ship To: West Virginia University Department of Intercollegiate Athletics 3450 Monongahela Blvd, Morgantown, WV 26505		One Waterfront I PO Box 6024 Morgantown WV Ph: 304-293-57 Email: pcpsap@	West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd	
Date of Order / Buyer: July 1, 2018 D Salotti	Payment Terms: 30 Net	Ship Via: N/A	FOB: N/A	Freight Terms: N/A	Delivery Date: Per Agreement	

AGREEMENT

This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University and Fevo.

for: Ticketing Services

Services beginning July 1, 2018 and extending through June 30, 2019

All services shall be performed in accordance with the standard form of agreement attached hereto as a part hereof.

Service performed under this Agreement is to be continued in the succeeding fiscal year contingent upon funds being appropriated by te Legistlature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work.

Total Amount of this Order:

Open End

Authorized Purchasing Agent Signature:

All CONTRACTS / PURCHASE ORDERS / AGREEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS INCLUDED HEREIN

WVU FOIA #19209 (SUP)-093



AGREEMENT FOR SERVICES Between WEST VIRGINIA UNIVERSITY And HOST COMMITTEE, INC. dba FEVO

This Service Agreement ("Agreement") made this 1st day of July, 2018 by and between the West Virginia University Board of Governors on behalf of West Virginia University and its Department of Intercollegiate Athletics located in Morgantown, WV 26506, ("University"), and Host Committee, Inc. dba Fevo, located at 373 Park Avenue South, 5th Floor, New York, NY 10016 ("Vendor").

WHEREAS, the University desires to have the Vendor perform certain professional services;

WHEREAS, the Vendor represents that he/she is qualified, ready, willing and able to perform such professional services; and

THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. Scope of Work.

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth in Exhibit A ("Services"), with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University. The Services shall include the following: Ticketing Services

2. Agreement Term.

This Agreement shall commence on July 1, 2018 and will terminate on June 30, 2019 or as otherwise stated in this Agreement. The University reserves the right to alter the starting and ending dates according to the needs of the University. Agreement may be renewed for 12 month periods upon written agreement from both parties.

Compensation.

- A. The University will pay Vendor for the Services performed hereunder on the following basis (specify rates or flat fixed fee) set forth in Exhibit B (Pricing); all expenses agreed to by the parties, including travel, shall be included in the daily rate or fixed fee compensation. University will not reimburse or otherwise be responsible for fees not contained therein. Any terms or conditions contained in an invoice or rate schedule which are different from, in addition to, or which vary the terms and conditions of this Agreement, shall not be binding upon University and University objects thereto.
- B. Payment will be made upon submission of detailed invoices and any other documentation required for such payment based upon Section 3 A., above. Payment will only be made in the name of the Vendor as specifically identified and set forth in this Agreement. Invoices shall contain, or be attached to, supporting documentation that is satisfactory to the University which, at a minimum, shall state the Service rendered in detail, dates of Service, Contract Identification, and any additional information facilitating the proper allocation and payment of such invoice. Payment Terms shall be Net 30.
- C. If applicable, Vendor must be registered with the State of West Virginia pursuant to W. Va. Code §18B-5-5 before the Vendor is eligible to render services to the University. To be eligible to render services hereunder, Vendor must have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. By execution of this Agreement, Vendor warrants that it is a registered vendor with the State of West Virginia and in good standing.
- D. Upon request from University and upon execution of this Agreement, Vendor shall provide University with a completed original Department of the Treasury, Internal Revenue Service, Form W9 "Request for Taxpayer Identification Number and Certification."
- E. University shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, University shall provide, upon the request of Vendor, all applicable tax exemption certificates.



- F. All invoices for Services shall be paid in arrears within thirty (30) days after the submission by Vendor of a valid invoice for Services rendered. Pursuant to W. Va. Code § 12-3-10, payments may only be made after the services have been performed. No deposit or prepayment may be requested by Vendor or paid by University.
- G. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these Services, this Agreement becomes void and of no effect after June 30.

4. Reporting.

In rendering the Services performed hereunder, the Vendor shall communicate with West Virginia University through its Department of Intercollegiate Athletics to the attention of the Senior Associate Athletics Director.

University shall have the right, but not the duty or obligation, to inspect the work at any time to ensure compliance with the terms and provisions of this Agreement.

5. Method of Operations.

- A. Vendor shall promptly commence and diligently prosecute the Services in a safe, careful, skillful, efficient and workmanlike manner in accordance with recognized methods and practices, in compliance with all lawful policies of the University, and in compliance with all federal, state and local laws, rules and regulations, orders and permits, now existing or hereinafter enacted with respect to the Services and the Vendor, including but not limited to, laws relating to equal employment opportunity, as well as all generally accepted standards applicable to such work.
- B. Vendor certifies that it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Agreement pursuant to W. Va. Code § 5A-3-10a.
- C. Vendor submits that to its knowledge, no officer or employee of the State of West Virginia or University has participated in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W. Va. Code § 6B-1-2, et seg. (2010).
- D. Vendor certifies that it (a) has full power and authority to enter into this Agreement and (b) will not hereafter enter into any agreement or understanding with anyone else that might conflict with this Agreement.
- E. Unless otherwise directed by University in writing, Vendor shall secure all necessary permits, licenses, bonds (if applicable) and identification numbers required to perform the Services and shall pay all fees in connection therewith. Vendor shall be fully responsible for compliance with same and shall fulfill all obligations in relation thereto. If requested, Vendor shall provide University with copies of all permits, licenses, bonds and identification numbers required to perform the Services.
- F. Vendor shall provide to University all documentation necessary and required to show proof of insurance and proof of Workers' Compensation coverage prior to University executing this Agreement. Vendor further agrees and understands that failure to maintain the required insurance as stated in Section 14 may lead to termination of this Agreement pursuant to Section 14 below, in the sole discretion of University.
- G. Vendor shall annually perform the necessary, complete and thorough background and any other applicable checks prior to assigning any person or persons to provide Services to WVU, and, upon WVU's request, shall provide evidence to WVU that such person(s) have successfully completed such checks. Vendor will not permit any person to perform Services if such person has not successfully completed a background and any other applicable check. The documentation for these checks should be available for inspection by WVU within twenty-four (24) hours of such request.



H. All persons performing work for WVU must follow WVU employee policies, http://employeerelations.hr.wvu.edu/wvu-handbooks. Failure to comply with WVU employee policies may result in the removal of said individual from WVU campuses.

Relationship of the Parties.

Vendor shall perform the Services as an independent contractor. University is interested only in the results to be achieved and compliance by Vendor with the terms and conditions of this Agreement and all applicable laws. The conduct and control of the Services shall lie solely and exclusively with Vendor. Neither Vendor nor any of its agents, employees, subcontractors, servants or invitees (collectively "Vendor's Employees") shall be considered an agent or employee of University, nor shall anything in this Agreement be construed as creating a single enterprise or joint venture, for any purpose. Vendor's Employees are not entitled to any benefits provided by University for its employees. However, the work is subject to the right of inspection and approval by University and all applicable governmental authorities. Vendor shall be solely responsible for the acts of Vendor and Vendor's Employees during the performance of the Services.

7. <u>Written Notice/Delivery.</u> Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent either by registered or certified mail with return receipt requested, facsimile transmission with confirmation of receipt, or by national overnight courier, addressed to the receiving party at the address below:

Host Committee, Inc. dba Fevo c/o Colin Casey 373 Park Avenue South 5th Floor New York, NY 10016 Phone Number: 484.363.0244

Email: colin@fevo.com

West Virginia University: c/o Matt Wells 3450 Monongahela Blvd. Morgantown, WV 26506 Phone Number: (304) 293-3088

Email: Matt.Wells@mail.wvu.edu



- 8. Examination of Records and Vendors Progress. The University shall have access to and the right to examine any pertinent books, documents, papers, and records of Vendor involving transactions related to this Agreement until the expiration of three years after final payment hereunder. In the performance of the Services, Vendor has the authority to control and direct the performance of the details of the work, the University being interested only in the results obtained. However, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection and supervision to secure the satisfactory completion thereof.
- 9. <u>Publicity.</u> It is also agreed that no advertising publicity matter having or containing any reference to West Virginia University, or in which the name is mentioned, shall be made use of by the Vendor or anyone on the Vendor's behalf unless and until the same shall have first been submitted to, and received the written approval of, an authorized representative of the University.
- 10. Non-Discrimination. The Vendor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- 11. <u>Intellectual Property.</u> All of the materials developed by Vendor and all materials prepared for and delivered to the University by Vendor under this Agreement shall belong exclusively to the University and shall be deemed to be **works made for hire** and the University shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title and interest therein, including the right to revise, edit, and distribute same. Notwithstanding the foregoing, nothing herein conveys or transfers ownership of or rights to Vendor's Intellectual Property. For the purpose of this Agreement, Vendor's Intellectual Property shall mean and include those tools, templates, reporting formats and other items or artifacts that Vendor employs as part of its normal business. In the event Services resulting from this Agreement include such Vendor's Intellectual Property, then Vendor hereby grants an limited, royalty free, exclusive right to University to use such Vendor's Intellectual Property as it deems fit to carry out the purposes contemplated by this Agreement.

Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the West Virginia University Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to

University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

- 12. <u>Patent Rights.</u> The Vendor agrees that any discovery or invention, whether or not subject to patent, developed as a direct result of work done under this Agreement, shall be the sole property of the University and the University shall have the exclusive right to any patent derived therefrom. Vendor further agrees to report promptly in writing to the University any discovery or invention developed under this Agreement.
- 13. <u>Indemnification.</u> Vendor agrees to indemnify, defend, and hold whole and harmless the University, its affiliates, and their respective Board of Governors, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on University premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 do not allow University to hold harmless or indemnify Vendor.
- 14. **Insurance.** During the term of the Agreement, Vendor shall procure. at its own expense, and maintain for the duration of the Agreement, the following insurance coverage from insurers licensed or registered to do business in the State of West Virginia: (a) Commercial general liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (b) Worker's Compensation insurance in accordance with applicable statutory limits (c) Commercial Automobile insurance in the amount of \$1,000,000 per occurrence for all owned, non-owned, hired. leased, rented, and employee non-owned vehicles, (d) where applicable, professional liability insurance of \$1,000,000 per claim/loss and \$2,000,000 annual aggregate, with proof that coverage shall remain in effect for a minimum of three years from the date of completion of the project, Vendor shall provide such other insurance as may be required by law. All insurance carried by Vendor in connection with the Services shall list University as an additional insured and such insurance shall be primary and not contributory as to any other insurance the University may have in effect. The Vendor shall provide a certificate of insurance to the University evidencing required coverage prior to commencement of the Services. All policies shall provide a minimum of thirty (30) calendar day's written notice prior to cancellation or material change. The insurance company(ies) providing the above described coverage shall have an AM Best Rating of no less than (A-) excellent.

WVU TC001 (V:03/2011)

Page 4 of 9



University does not express any opinion as to the sufficiency of the liability limits set forth above. The insurance required hereunder is not a limitation of any liability of Vendor.

- 15. FERPA. Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA) and University's FERPA Policy found at http://ferpa.wvu.edu/policy including FERPA's limitations on re-disclosure as set forth in 34 C.F.R § 99.33(a)(2).
- 16. HIPAA. Vendor shall, if applicable, meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the "Act"), the privacy standards adopted by the U.S. Department of Health and Human Services ("HHS"), 45 C.F.R. parts 160 and 164, subparts A and E (the "Privacy Rule"), the security standards adopted by HHS, 45 C.F.R. parts 160, 162, and 164, subpart C (the "Security Rule"), and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic Clinical Health Act, Division A, Title XIII of Pub. L. 111-5 and its implementing regulations (the "HITECH Act"), due to their status as a "Covered Entity" or a "Business Associate" under the Act. The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to as "HIPAA" for the purposes of this Agreement.
- 17. Confidentiality of Information. In order for the Vendor to effectively provide the Services required under this Agreement, it may be necessary or desirable for the University to disclose to the Vendor confidential and proprietary information and trade secrets pertaining to the University's past, present and future activities. The Vendor hereby agrees to treat information which has been designated to the Vendor by the University in writing as being confidential and proprietary information or trade secrets in a confidential manner. The Vendor further agrees that it will not disclose any such information so designated to anyone outside of the University during the period of this Agreement or thereafter without the prior written consent of the University, unless the Vendor is required to disclose any such information for the following reasons: 1) To comply with a legal or court order. 2) to defend itself or pursue its legal rights in a legal proceeding, or 3) to protect the health, safety, or welfare or others.
- 18. Termination. University reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice to Vendor. Such notice shall be delivered pursuant to Section7. above. Upon receipt of such notice, the Vendor shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by the Vendor in performing this Agreement, whether completed or in progress. Vendor will be compensated for Services provided pursuant to this Agreement to the effective date of termination only.
- 19. Force Majeure. Neither Vendor nor University shall be liable for any failure or delay in its performance of this Agreement if such failure or delay is directly or indirectly occasioned by an event of Force Majeure. For purposes hereof, "Force Majeure" means any event beyond the control of either party and which is relied upon by either party as justification for delay in, or as excuse from complying with, any obligation required of the party under this Agreement, including, but not limited to: (i) an act of God, war, terrorism, landslide, lightning, earthquake, fire, explosion, storm, WVU TC001 (V:03/2011)

Page 5 of 9

- flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Services; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of execution of this Agreement, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial or material adverse effect on the cost of performing the obligations herein; (iv) any work stoppages, strikes, picketing, labor dispute, or similar activities at the Premises; (v) the institution of a legal or administrative action or similar proceeding by any person or entity that delays or prevents any aspect of the Services. In the event of Force Majeure, and during the continuance thereof, the obligations under this Agreement shall be suspended and neither party shall have any liability to the other due to such event of Force Majeure or such suspension. If the Force Majeure continues unabated for a period of sixty (60) days and renders either party unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then either party shall have the right to terminate this Agreement and shall not have any liability to the other party other than any monetary obligations to the other which has become due prior to the date of such termination.
- 20. Changes. The University may, from time to time, require changes in the scope of the Services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.
- 21. <u>Jurisdiction; Governing Law.</u> The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement. All disputes arising out of related to this Agreement shall be filed by Vendor in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.
- 22. Successors and Assigns. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. The personal skill, judgment and abilities of the Vendor are an essential element of this Agreement. Therefore, although the parties recognize that the Vendor may employee qualified personnel to provide Consulting Services under the Vendor's supervision, the Vendor shall not assign, transfer or subcontract any portion of the Consulting Services to another party without the prior written consent of the University.
- 23. Headings. The headings of the herein are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 24. Non-Waiver Provision. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every
- 25. Severability. Each provision of this Agreement is to be interpreted in such a way as to be valid under applicable law. If any provision is invalid under applicable law, it is to be considered ineffective only to the extent of



such invalidity and the remainder of the provision and the other provisions of this Agreement remain valid.

- 26. <u>Survival.</u> The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, indemnifies, certifications, warranties, and any expressed limitation of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.
- 27. <u>Authorized/Electronic Signatory.</u> If the Agreement is signed by someone other than the Vendor, the person signing expressly warrants that he/she is the authorized person/entity to execute this Agreement for the Vendor. Any signed document transmitted by fax or other electronic means shall be considered an original document and shall have the binding and legal effect of an original document.
- 28. <u>Entire Agreement.</u> This Agreement and any attachments hereto, represent the entire agreement between the parties and supersedes any prior oral or written understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day, month, and year first written above.

Host Committee, Inc. dba Fevo	West Virginia University Board of Governors On behalf of West Virginia University	
Ву:	By: War Salotti	
Print:Ari Dale	Print: Dana M Salotti	
Its:President and CEO	lts: Category Manager	
Date:8/16/18	Date: 8/16/2018	

Approved as to form prior to acknowledgment thereof

this/11th day of May , 20 16

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EXHIBIT A Services

1. Overview of Services:

- a. The display of certain widgets ("Fevo Widgets") on the University Properties set forth on the Order Form. For the purposes of this agreement, a "Widget" is defined as Fevo's buy tickets functionality living on WVU website(s).
- b. The sale of tickets ("Tickets") for the Events set forth on the Order Form via the University Properties and the Fevo Website (defined below), or as otherwise mutually agreed by the parties from time to time (collectively, the "Services").
- 2. For all included events, Vendor will provide the following services:
 - a. Fevo Button and Pages for each event
 - b. Fevo Pages for any requested Group Sales Clients, Partners, Sponsors
 - c. Sharing of Consumer Data
 - d. Dedicated Client Success and Customer Service Managers
- 3. Vendor grants University a nonexclusive, nontransferable right and license (without right to sublicense) to (a) embed the code provided by Vendor hereunder on the University Properties in order to serve the Fevo Widgets to the University Properties; and (b) use and display the Fevo Widgets solely on the University Properties. Vendor shall implement, in consultation with University, aesthetic modifications to the Fevo Widgets in order to match the general look and feel of University's branding elements. All branding is subject to approval by University's Trademark and Licensing Department. Vendor will not be liable for (i) any failures in the Fevo Widget, Services, or any other problems which are related to the University Content, (ii) any equipment or service outside of Vendor's facilities or control, or (iii) unauthorized access, breach of firewalls or other hacking by third parties.

4. Vendor Responsibilities

- a. *Ticket Orders*. Vendor shall accept and process online orders for Tickets to Events made through the Fevo Widget, and shall submit the Settlement Payment to University in accordance with Section 7.
- b. Support. Vendor shall provide general support to potential Ticket buyers and Ticket purchasers, including but not limited to answering questions about the Events; provided that University shall act as second level support for any questions that cannot be answered by Vendor.
- c. Event Pages on Fevo Website. Vendor shall implement, in consultation with University, a page on the Fevo Website for each Event through which user's friends and invitees may purchase Tickets to Events.

University Obligations

- a. *Integration*. University shall integrate the Fevo Widget onto the University Properties as set forth on an applicable Order Form and in accordance with Vendor's reasonable instructions.
- b. Ticket Holds. Unless otherwise agreed, University will place holds (i.e., withhold from sale to the public) (the "Ticket Holds") on a mutually agreed number seats (in locations determined by University in its sole discretion and communicated to Vendor via a seating map) at the applicable Ticket Prices to each Event.
- c. Support. University shall provide second level support for all Ticket sales.

6. Personal Information

- a. The parties acknowledge that in performing their obligations hereunder, each party may obtain from the other party or have access to, or otherwise store, process or transmit, certain personally identifiable information of the other party, its employees, its agents or its customers, including without limitation names, email addresses, financial information, mailing address, occupation, and title ("PII"). Each party represents and warrants that it has the right to share such PII with the other party and that such party may use the PII as provided for herein.
- b. PII Collected Through Client Properties. The parties agree that all PII collected by Vendor in connection with Ticket sales made through the Fevo Widgets on University Properties shall be jointly owned by Vendor and University. Vendor agrees to make available to University such information upon the conclusion of each Event.



- c. PII Collected Through Fevo Website. The parties agree that all PII collected by Vendor in connection with Ticket sales for Events on the Fevo Website shall be jointly owned by the parties. Vendor agrees to make available to University such information upon the conclusion of each Event.
- d. Limited Use. Each party agrees that at all times during the term of this Agreement, it will comply with its obligations under all privacy, security and data protection laws, rules and regulations of any applicable jurisdiction, and all then-current industry standards, guidelines and practices with respect to privacy, security and data protection, including the collection, processing, storage, protection and disclosure, of PII.

7. Payments

- a. Billing and Payment Terms. Vendor will collect all proceeds from Ticket sales under this Agreement, deposit such proceeds into a separate account maintained by Vendor, and remit such proceeds to University, less Fevo processing fees charged by Vendor to Ticket buyers ("Processing Fees"), credit card processing fees, and payment processing fees (collectively, the "Settlement Payment"). All Settlement Payments will be made by bank transfer, check or credit card within 7 business days following the Event.
- b. Refunds. All Ticket sales are final, unless the Event is canceled or University authorizes a refund in its sole discretion. If an Event is canceled or University authorizes refunds to Ticket buyers, Vendor will refund the Ticket face value to Ticket buyers who request refunds; provided that Vendor is entitled to keep the Processing Fees generated from such Ticket sale. It is agreed and understood that Vendor's obligation to make any refunds is subject and limited to Vendor holding or receiving from University the full amount of funds necessary to make refunds to all Ticket buyers properly entitled to a refund. If the amount of Ticket sale proceeds held by Vendor is insufficient to cover refunds, Vendor will invoice University for the total amount due and University will provide Vendor with sufficient funds to cover such refunds within 30 days of receiving the valid invoice.
- c. Chargebacks and Disputes. Vendor will use commercially reasonable efforts, on behalf of University, to reverse any chargebacks and disputes ("CD"). University is responsible for all CDs, including those due to user error, except to the extent that a CD is due to the error of Vendor. Vendor reserves the right to deduct CDs from the Settlement Payment for up to 90 days plus applicable processing fees after the applicable Event. If the amount of Ticket sale proceeds held by Vendor is insufficient to cover CDs, Vendor will invoice University for the total amount due and University will provide Vendor with sufficient funds to cover such chargebacks within 30 days of receiving the valid invoice.



EXHIBIT B Pricing

Ticket Prices: Ticket prices will be determined by University

o All ticket pricing to be confirmed during an initial planning session between the parties, which shall occur no later than thirty (30) days after execution of this Vendor Agreement.

Fees: For all events through Fevo, Fevo will charge:

- 1) Consumer: fee of \$1.50 for tickets \$10 and under, \$2.50 for tickets \$10.01-\$25.00, \$3.50 for tickets \$25.01-\$50, \$5.50 for tickets \$50.01-\$75.00, \$7.50 for tickets \$75.01-\$150.00 and \$10.00 for tickets \$150+, (the "Fee") charged to the consumer on a per ticket basis for each Ticket Type.
- Credit Card processing fees of 2.9% + \$0.30 USD per ticket.
 Paid by consumer

Client Properties:

Fevo Button to be added to additional webpages as requested and determined by University, I.E. any additional Sponsor, Partner sites. Fevo Pages for Groups to be requested and determined by the University.

Delivery of Ticket Details: Based on Client business rules

STATE OF WEST VIRGINIA Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:
Vendor's Name: Hosi Commisse Inc. DBA FEUD / Himmen Kommi
Authorized Signature:
State of New York
County of New Mork, to-wit:
Taken, subscribed, and sworn to before me this $\frac{13}{2}$ day of $9000000000000000000000000000000000000$
My Commission expires
AFFIX SEAL HERE NOTARY PUBLIC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/25/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

τ	his certificate does not confer rights to the certificate holder in fied or)						
PRC	DUCER	CONTA NAME:	ACT		370					
Do	ug Jones	PHONE (480) 951-4177 FAX (480) 951-4266								
	Artex Risk Solutions, Inc.	(A/C, No, Ext): (400) 931-4177 (A/C, No): (400) 931-4200								
0.000	40 E. Chaparral Rd.; Suite 275	E-MAIL ADDRESS: SDL.BSD.Certificates@artexrisk.com								
Sc	ottsdale, AZ 85250		INSURER(S) AFFORDING COVERAGE							
<u> </u>		INSUR	ER A: America	n Zurich Insu	rance Company		40142			
	JRED Net HR IV, LLC Labor Contractor, for co-employees of: Host Committee, Inc.	INSURE	ER B :							
	O Third Ave FI 10	INSURE	ER C :							
Nev	w York, NY 10022	INSURE	ER D :							
		INSURE	ER E :							
		INSURE	ERF:	3.00						
co	VERAGES CERTIFICATE NUMBER: 18NY605830	0968			REVISION NUMBER:					
	HIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HA									
C	NDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION ERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORI XCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVI	DED BY	THE POLICIE	S DESCRIBE	D HEREIN IS SUBJECT TO					
INSR LTR				POLICY EXP (MM/DD/YYYY)	LIMIT	s				
LIR	TYPE OF INSURANCE INSD WVD POLICY NUMBER COMMERCIAL GENERAL LIABILITY		(MM/DD/TTTT)	(MIMI/DD/TTTT)						
	CLAIMS-MADE OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$				
					MED EXP (Any one person)	\$				
					PERSONAL & ADV INJURY	\$				
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$				
	POLICY PRO- LOC				PRODUCTS - COMP/OP AGG	\$				
	OTHER:					\$				
	AUTOMOBILE LIABILITY			0	COMBINED SINGLE LIMIT (Ea accident)	\$				
	ANY AUTO				BODILY INJURY (Per person)	\$				
	OWNED SCHEDULED				BODILY INJURY (Per accident)	\$				
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-	DED RETENTION\$				▼ PER OTH-	\$				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N				X PER STATUTE OTH-					
Α	ANYPROPRIETOR/PARTNER/EXECUTIVE N/A WC 47-58-168-07	25	07/01/2018	07/01/2019	E.L. EACH ACCIDENT	\$	2,000,000			
	(Mandatory in NH)				E.L. DISEASE - EA EMPLOYEE	\$	2,000,000			
	If yes, describe under DESCRIPTION OF OPERATIONS below				E.L. DISEASE - POLICY LIMIT	\$	2,000,000			
	Location Coverage Per	iod:	07/01/2018	07/01/2019	Client# 9AMP-NY					
Cove	DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Host Committee, Inc. 135 W 26th St 2nd Fl New York, NY 10001 New York, NY 10001									
CEI	RTIFICATE HOLDER	CANC	CELLATION							
	Host Committee, Inc. 135 W 26th St 2nd Fl New York, NY 10001	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.								
		AUTHO	RIZED REPRESE	NTATIVE	and the same of th					



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/14/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

	s certificate does not confer rights t	o the	cert	ificate holder in lieu of s).				
PROD	UCER				CONTAI NAME:		any Thomas	1-10			
JD Thomas & Associates Inc						PHONE (A/C, No, Ext): (516)398-2891 FAX (A/C, No):					
	110-45 71st Road #3S				E-MAIL ADDRES	ss: btho	mas@jdtins.	com		,	
	Forest Hills, NY 11375					INS	SURER(S) AFFOR	RDING COVERAGE		NAIC#	
					INSURE	RA: New	York Marir	ne & General Ins Co			
INSU	Host Committee Inc.				INSURE	RB:					
	DBA Fevo				INSURE	RC:					
	373 Park Ave S, 5th Flo	or			INSURE	RD:					
	New York, NY 10016	101			INSURE	RE:					
	New Tork, NT 10010				INSURER F:						
				NUMBER: 00000000-0	_			REVISION NUMBER:	10		
CE	IS IS TO CERTIFY THAT THE POLICIES (DICATED. NOTWITHSTANDING ANY REC RTIFICATE MAY BE ISSUED OR MAY PE CLUSIONS AND CONDITIONS OF SUCH	QUIRE RTAIN	MEN N, THI	T, TERM OR CONDITION OF E INSURANCE AFFORDED I	F ANY C BY THE	ONTRACT OF POLICIES DE	ROTHER DOC SCRIBED HER	UMENT WITH RESPECT TO REIN IS SUBJECT TO ALL T	O WHIC	CH THIS	
INSR LTR	TYPE OF INSURANCE	ADDL		POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT	s		
Α	X COMMERCIAL GENERAL LIABILITY	Υ	N	PK201800011247		07/02/2018	07/02/2019	EACH OCCURRENCE	\$	1,000,000	
	CLAIMS-MADE X OCCUR							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	100,000	
								MED EXP (Any one person)	\$	5,000	
								PERSONAL & ADV INJURY	\$	1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$	2,000,000	
	X POLICY PRO- JECT LOC							PRODUCTS - COMP/OP AGG	\$	1,000,000	
	OTHER:								\$	•	
Α	AUTOMOBILE LIABILITY	N	N	AU201800002669		07/02/2018	07/02/2019	COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000	
	ANY AUTO				1			BODILY INJURY (Per person)	\$		
	OWNED SCHEDULED AUTOS							BODILY INJURY (Per accident)	\$		
	X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY							PROPERTY DAMAGE (Per accident)	\$		
									\$		
Α	X UMBRELLA LIAB X OCCUR	Υ	N	UM201800003148		07/02/2018	07/02/2019	EACH OCCURRENCE	\$	2,000,000	
	EXCESS LIAB CLAIMS-MADE				1			AGGREGATE	\$	2,000,000	
Γ	DED RETENTION\$				1				\$		
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							PER OTH- STATUTE ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A						E.L. EACH ACCIDENT	\$		
- 10	DFFICER/MEMBER EXCLUDED? Mandatory in NH)	NA						E.L. DISEASE - EA EMPLOYEE	\$		
l	f yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$		
		,									
Cer	RIPTION OF OPERATIONS / LOCATIONS / VEHICL tificate Holder is included as add terms and conditions of the insu	dition	nal ii	nsured as respects to					ontrac	t per	
CER	TIFICATE HOLDER				CANC	ELLATION					
West Virginia University: c/o Matt Wells 3450 Monongahela Blvd. Morgantown, WV 26506						SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE BETTAMY & HUMAN					
					,		00 0045 : 5		A 11 - 1	(BRT)	

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ACORD 25 (2016/03)

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Printed by BRT on August 14, 2018 at 05:33PM

West	: Virgi	nia U	niversity	FY	Buyer	Date	Acct #		P. O Date	Order #	
Purchase Change Request			19	JF	6/10/19	VARIOUS	3	7/1/18	U19FE	VO	
x	Requisitior Regular Pu Contract Po Open End Agreement	urchase (urchase Contract		x	Cancella Increase	/Decrease Balance(\$25.00 Maximum n Error	1)	Change of Change of Other	Fotal Amount of Account of Vendor Name/ Address		
Host Cor d.b.a. Fe 373 Park 5th Floor New York	nmittee, vo Avenue	Inc. South	, i <u>Liii,</u> i iiolio i				Spending Unit Name & Address West Virginia University Department of Intercollegiate Athletics 3450 Monongahela Blvd. Morgantown, WV 26505				
Item#	Quantity	Unit M				Descript	tion			Unit Price	Extended Price
			Renew Contra	act U19I all the te s. , 2019 -	FEVO, orms and	Change Order # RACT AS FOLLOWS originally effective July d conditions containe 0, 2020	ly 1, 2018 for on	e (1) ac contrac	lditional year t and subsequent		
Reason f Renewal								Increas Decrea	ase	\$	Open End
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Funding F	Paragran	h						!			
Service p fiscal yea this service	erformed r conting ce. In the	under ent upo e event	on funds being a	appropria ppropria	ated by ated for	in the succeeding the Legislature for this service, this June 30.	(for	shual Fa	rnev	6/10/19 Date

Approved

Procurement Officer

Purchasing, Contracts and Payment Services

June 10, 2019

Host Committee, Inc. d.b.a. Fevo 373 Park Avenue South 5th Floor New York, NY 10016

Subject: West Virginia University U19FEVO

To Whom It May Concern:

Your Open-end Contract with West Virginia University, U19FEVO, for Ticketing Services, expires on June 30, 2019. In accordance with the terms and conditions of this agreement, this Contract, if mutually agreed between both parties, may be renewed for another (1) year term.

At this time, WVU wishes to pursue this option for renewal for the period 7/1/19 through 6/30/20.

To complete a renewal of the contract, you must also provide to me, with your acknowledgment, a copy of your current Certificate of General Liability Insurance Coverage and new Purchasing Affidavit, which is attached.

If you have any questions, you may call me at 304-293-8453; or e-mail me at joshua.farner@mail.wvu.edu.

Sincerely, Joshua Farner Joshua Farner Category Analyst

Phone: 304-293-5711

Fax: 304-293-8152

I agree with the foregoing request for rene	wal of contract.		
FIRM: Host Committee, Inc. DBA Fevo (Please com	plete all information)		
BY: Ari Daie	373 Park Avenue Sou	uth, 5th Floor	
(Printed Name)	(Address)		
(Signature)	New York	NY	10016
DATE: 8/1/2019	(City)	(State)	(Zip)
ari@fevo.com	(Phone)		
(e-mail address)	(Fax)		

STATE OF WEST VIRGINIA Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

No 01PE6196888

Qualified in Queens County

Certificate Filed in New York County

Commission Expires November 24, 20

Favo Inc	
Vendor's Name: Fevo Inc	
Authorized Signature:	
State of New York	
County of New York, to-wit:	
Taken, subscribed, and sworn to before me this 2915 aay of, 2019.	. •
My Commission expires November 24 , 2020.	
AFFIX SEAL HERE NOTARY PUBLIC MARY PUBLIC	
AFFIX SEAL HERE CHARMAINE H PERDON Notary Public State of New York Purchasing Affidavit (Revise	ed 01/19/2018

WVU FOIA #19209 (SUP)-108



Procurement Contracting & Payment Services One Waterfront Place / 3rd Floor / Don Knotts Blvd PO Box 6024 Morgantown WV 26506

Ph: 304-293-5711

Number:

U17WORLDTRAV

Please show this number on all packages and documents related to this Order.

Visit WVU	J PCPS on the inte	rnet: http://pcps.wv	vu.edu				
Vendor: World Travel Service, Inc. 10201 Parkside Drive Knoxville, TN 37922		Ship To: West Virginia University One Waterfront Place, 3rd Floor PO Box 6024 Morgantown, WV 26506			Invoice To: West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd PO Box 6024 Morgantown WV 26506-6024 Ph: 304-293-5711 Itemize Invoices According to Purchase Order One (1) original invoice required		
Date of Order / Buyer:	Payment Terms:	Ship Via:	FOB:		Freight Terms:	Delivery Date:	
March 13, 2017 D Salotti	30 Net	N/A	N/A		N/A	Per Agreement	
This Agreement cons behalf of West Virgini for: to provide travel	a University a	ce of contract by				y Board of Governors on	
Services beginning All services shall be pe	April 1, 2017 erformed in acco		nding through		31, 2020 nt attached he	ereto as a part hereof.	
If 'Open-End' is stated in lie quantity or length of service the intended scope of work	e required; but, only to th		nain within	Total Ar of th		pen End	

All CONTRACTS / PURCHASE ORDERS / AGREEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS INCLUDED HEREIN

WVU FOIA #19209 (SUP)-109



AGREEMENT FOR SERVICES
Between
WEST VIRGINIA UNIVERSITY
And
WORLD TRAVEL SERVICE, INC.

This Service Agreement ("Agreement") made this 13th day of March, 2017, by and between the West Virginia University Board of Governors on behalf of West Virginia University and its Department of Procurement, Contracting and Payment Services located in Morgantown, WV 26506 ("University") and World Travel Service, Inc., located at 10201 Parkside Drive, Knoxville, TN 37922 ("Vendor").

WHEREAS, the University has selected Vendor pursuant to the laws of the State of West Virginia through competitive request for proposal (RFP) #90003586D. Award of business is made as a multiple, non-exclusive award.

WHEREAS, the University desires to have the Vendor perform certain professional services;

WHEREAS, the Vendor represents that he/she is qualified, ready, willing and able to perform such professional services; and

THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

Scope of Work.

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth in Exhibit A ("Services"), with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University. The Services shall include the following:

2. Agreement Term.

This Agreement shall commence on April 1, 2017, and will terminate on March 31, 2020, or as otherwise stated in this Agreement. The University reserves the right to alter the starting and ending dates according to the needs of the University. The agreement may be renewed for one (1) year periods thereafter, if agreed upon by both parties in writing.

Compensation.

- A. The University will pay Vendor for the Services performed hereunder on the following basis set forth in Exhibit B (Pricing); all expenses agreed to by the parties shall be included in the daily rate or fixed fee compensation. University will not reimburse or otherwise be responsible for fees not contained therein. Any terms or conditions contained in an invoice or rate schedule which are different from, in addition to, or which vary the terms and conditions of this Agreement, shall not be binding upon University and University objects thereto.
- B. Travel will be charged to University's purchasing card program or another mutually agreed upon payment method. Payment may be made upon submission of detailed invoices and any other documentation required for such payment based upon Section 3 A., above. Payment will only be made in the name of the Vendor as specifically identified and set forth in this Agreement. Invoices shall contain, or be attached to, supporting documentation that is satisfactory to the University which, at a minimum, shall state the Service rendered invoice. Payment Terms shall be Net 30.
- C. If applicable, Vendor must be registered with the State of West Virginia pursuant to W. Va. Code §18B-5-5 before the Vendor is eligible to render services to the University. To be eligible to render services hereunder, Vendor must have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. By execution of this Agreement, Vendor warrants that it is a registered vendor with the State of West Virginia and in good standing.
- D. Upon request from University and upon execution of this Agreement, Vendor shall provide University with a completed original Department of the Treasury, Internal Revenue Service, Form W9 "Request for Taxpayer Identification Number and Certification."
- E. University shall not directly or indirectly be liable for taxes related to travel within the state of West Virginia. To the extent allowed by law, University shall provide, upon the request of Vendor, all applicable tax exemption certificates.

WVU TC001 (V:03/2011)

Page 1 of 10



- F. All invoices for Services shall be paid in arrears within thirty (30) days after the submission by Vendor of a valid invoice for Services rendered. Pursuant to W. Va. Code § 12-3-10, payments may only be made after the services have been performed.
- G. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these Services, this Agreement becomes void and of no effect after June 30.

4. Reporting.

In rendering the Services performed hereunder, the Vendor shall communicate with West Virginia University through its Procurement, Contracting and Payment Services Department to the attention of Rachel Hays, Associate Director of Payment Services.

University shall have the right, but not the duty or obligation, to inspect the work at any time to ensure compliance with the terms and provisions of this Agreement.

5. Method of Operations.

- A. Vendor shall promptly commence and diligently prosecute the Services in a safe, careful, skillful, efficient and workmanlike manner in accordance with recognized methods and practices, in compliance with all lawful policies of the University, and in compliance with all federal, state and local laws, rules and regulations, orders and permits, now existing or hereinafter enacted with respect to the Services and the Vendor, including but not limited to, laws relating to equal employment opportunity, as well as all generally accepted standards applicable to such work.
- B. Vendor certifies that it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Agreement pursuant to W. Va. Code § 5A-3-10a.
- C. Vendor submits that to its knowledge, no officer or employee of the State of West Virginia or University has participated in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W. Va. Code § 6B-1-2, et seq. (2010).
- D. Vendor certifies that it (a) has full power and authority to enter into this Agreement and (b) will not hereafter enter into any agreement or understanding with anyone else that might conflict with this Agreement.
- E. Unless otherwise directed by University in writing, Vendor shall secure all necessary permits, licenses, bonds (if applicable) and identification numbers required to perform the Services and shall pay all fees in connection therewith. Vendor shall be fully responsible for compliance with same and shall fulfill all obligations in relation thereto. If requested, Vendor shall provide University with copies of all permits, licenses, bonds and identification numbers required to perform the Services.
- F. Vendor shall provide to University all documentation necessary and required to show proof of insurance and proof of Workers' Compensation coverage prior to University executing this Agreement. Vendor further agrees and understands that failure to maintain the required insurance as stated in Section 14 may lead to termination of this Agreement pursuant to Section 14 below, in the sole discretion of University.

6. Relationship of the Parties.

Vendor shall perform the Services as an independent contractor. University is interested only in the results to be achieved and compliance by Vendor with the terms and conditions of this Agreement and all applicable laws. The conduct and control of the Services shall lie solely and exclusively with Vendor. Neither Vendor nor any of its agents, employees, subcontractors, servants or invitees (collectively "Vendor's Employees") shall be considered an agent or employee of University, nor shall anything in this Agreement be construed as creating a single enterprise or joint WVU TC001 (V:03/2011)

Page 2 of 10



venture, for any purpose. Vendor's Employees are not entitled to any benefits provided by University for its employees. However, the work is subject to the right of inspection and approval by University and all applicable governmental authorities. Vendor shall be solely responsible for the acts of Vendor and Vendor's Employees during the performance of the Services.

7. Written Notice/Delivery. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent either by registered or certified mail with return receipt requested, facsimile transmission with confirmation of receipt, or by national overnight courier, addressed to the receiving party at the address below:

World Travel Service, Inc. c/o Lamar Shuler, President 10201 Parkside Drive Knoxville, TN 37922

West Virginia University: c/o Rachel Hays One Waterfront Place PO Box 6024 Morgantown, WV 26506 Phone Number: (304) 293-8451

Email: Rachel.Hays@mail.wvu.edu



- 8. Examination of Records and Vendors Progress. The University shall have access to and the right to examine any pertinent books, documents, papers, and records of Vendor involving transactions related to this Agreement until the expiration of three years after final payment hereunder. In the performance of the Services, Vendor has the authority to control and direct the performance of the details of the work, the University being interested only in the results obtained. However, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection and supervision to secure the satisfactory completion thereof.
- 9. <u>Publicity.</u> It is also agreed that no advertising publicity matter having or containing any reference to West Virginia University, or in which the name is mentioned, shall be made use of by the Vendor or anyone on the Vendor's behalf unless and until the same shall have first been submitted to, and received the written approval of, an authorized representative of the University.
- 10. Non-Discrimination. The Vendor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- 11. <u>Intellectual Property.</u> All of the materials developed by Vendor and all materials prepared for an delivered to the University by Vendor under this Agreement shall belong exclusively to the University and shall be deemed to be works made for hire and the University shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title and interest therein, including the right to revise, edit, and distribute same. Notwithstanding the foregoing, nothing herein conveys or transfers ownership of or rights to Vendor's Intellectual Property. For the purpose of this Agreement, Vendor's Intellectual Property shall mean and include those tools, templates, reporting formats and other items or artifacts that Vendor employs as part of its normal business. In the event Services resulting from this Agreement include such Vendor's Intellectual Property, then Vendor hereby grants an limited, royalty free, exclusive right to University to use such Vendor's Intellectual Property as it deems fit to carry out the purposes contemplated by this Agreement.

Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the West Virginia University Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to

University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

- 12. Patent Rights. The Vendor agrees that any discovery or invention, whether or not subject to patent, developed as a direct result of work done under this Agreement, shall be the sole property of the University and the University shall have the exclusive right to any patent derived therefrom. Vendor further agrees to report promptly in writing to the University any discovery or invention developed under this Agreement.
- 13. Indemnification. Vendor agrees to indemnify, defend, and hold whole and harmless the University, its affiliates, and their respective Board of Governors, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on University premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 do not allow University to hold harmless or indemnify Vendor.
- 14. Insurance. During the term of the Agreement, Vendor shall procure, at its own expense, and maintain for the duration of the Agreement, the following insurance coverage from insurers licensed or registered to do business in the State of West Virginia: (a) Commercial general liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (b) Worker's Compensation insurance in accordance with applicable statutory limits (c) Commercial Automobile insurance in the amount of \$1,000,000 per occurrence for all owned, non-owned, hired. leased, rented, and employee non-owned vehicles, (d) where applicable, professional liability insurance of \$1,000,000 per claim/loss and \$2,000,000 annual aggregate, with proof that coverage shall remain in effect for a minimum of three years from the date of completion of the project, Vendor shall provide such other insurance as may be required by law. All insurance carried by Vendor in connection with the Services shall list University as an additional insured and such insurance shall be primary and not contributory as to any other insurance the University may have in effect. The Vendor shall provide a certificate of insurance to the University evidencing required coverage prior to commencement of the Services All policies shall provide a minimum of thirty (30) calendar day's written notice prior to cancellation or material change. The insurance company(ies) providing the above described coverage shall have an AM Best Rating of no less than (A-) excellent.

WVU TC001 (V:03/2011)

West Virginia University.

University does not express any opinion as to the sufficiency of the liability limits set forth above. The insurance required hereunder is not a limitation of any liability of Vendor.

- 15. FERPA. Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA) and University's FERPA Policy found at http://ferpa.wvu.edu/policy including FERPA's limitations on re-disclosure as set forth in 34 C.F.R § 99.33(a)(2).
- 16. HIPPA. Vendor shall, if applicable, meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the "Act"), the privacy standards adopted by the U.S. Department of Health and Human Services ("HHS"), 45 C.F.R. parts 160 and 164, subparts A and E (the "Privacy Rule"), the security standards adopted by HHS, 45 C.F.R. parts 160, 162, and 164, subpart C (the "Security Rule"), and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic Clinical Health Act, Division A, Title XIII of Pub. L. 111-5 and its implementing regulations (the "HITECH Act"), due to their status as a "Covered Entity" or a "Business Associate" under the Act. The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to as "HIPAA" for the purposes of this Agreement.
- 17. Confidentiality of Information. In order for the Vendor to effectively provide the Services required under this Agreement, it may be necessary or desirable for the University to disclose to the Vendor confidential and proprietary information and trade secrets pertaining to the University's past, present and future activities. The Vendor hereby agrees to treat information which has been designated to the Vendor by the University in writing as being confidential and proprietary information or trade secrets in a confidential manner. The Vendor further agrees that it will not disclose any such information so designated to anyone outside of the University during the period of this Agreement or thereafter without the prior written consent of the University, unless the Vendor is required to disclose any such information for the following reasons: 1) To comply with a legal or court order, 2) to defend itself or pursue its legal rights in a legal proceeding, or 3) to protect the health, safety, or welfare or others.
- 18. <u>Termination</u>. University reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice to Vendor. Such notice shall be delivered pursuant to Section 6, above. Upon receipt of such notice, the Vendor shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by the Vendor in performing this Agreement, whether completed or in progress. Vendor will be compensated for Services provided pursuant to this Agreement to the effective date of termination only.
- 19. Force Majeure. Neither Vendor nor University shall be liable for any failure or delay in its performance of this Agreement if such failure or delay is directly or indirectly occasioned by an event of Force Majeure. For purposes hereof, "Force Majeure" means any event beyond the control of either party and which is relied upon by either party as justification for delay in, or as excuse from complying with, any obligation required of the party under this Agreement, including, but not limited to: (i) an act of God, war, terrorism, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local

Page 5 of 10

court, administrative agency or governmental office or body that stays, invalidates or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Services; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of execution of this Agreement, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial or material adverse effect on the cost of performing the obligations herein; (iv) any work stoppages, strikes, picketing, labor dispute, or similar activities at the Premises; (v) the institution of a legal or administrative action or similar proceeding by any person or entity that delays or prevents any aspect of the Services. In the event of Force Majeure, and during the continuance thereof, the obligations under this Agreement shall be suspended and neither party shall have any liability to the other due to such event of Force Majeure or such suspension. If the Force Majeure continues unabated for a period of sixty (60) days and renders either party unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then either party shall have the right to terminate this Agreement and shall not have any liability to the other party other than any monetary obligations to the other which has become due prior to the date of such termination.

- 20. <u>Changes.</u> The University may, from time to time, require changes in the scope of the Services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.
- 21. <u>Jurisdiction: Governing Law.</u> The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement. All disputes arising out of related to this Agreement shall be filed by Vendor in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.
- 22. <u>Successors and Assigns.</u> This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. The personal skill, judgment and abilities of the Vendor are an essential element of this Agreement. Therefore, although the parties recognize that the Vendor may employee qualified personnel to provide Consulting Services under the Vendor's supervision, the Vendor shall not assign, transfer or subcontract any portion of the Consulting Services to another party without the prior written consent of the University.
- 23. <u>Headings</u>. The headings of the herein are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 24. Non-Walver Provision. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 25. <u>Severability.</u> Each provision of this Agreement is to be interpreted in such a way as to be valid under applicable law. If any provision is invalid under applicable law, it is to be considered ineffective only to the extent of

WVU TC001 (V:03/2011)



such invalidity and the remainder of the provision and the other provisions of this Agreement remain valid.

- 26. <u>Survival.</u> The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, indemnifies, certifications, warranties, and any expressed limitation of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.
- 27. Authorized/Electronic Signatory. If the Agreement is signed by someone other than the Vendor, the person signing expressly warrants that he/she is the authorized person/entity to execute this Agreement for the Vendor. Any signed document transmitted by fax or other electronic means shall be considered an original document and shall have the binding and legal effect of an original document.
- 28. <u>Entire Agreement.</u> This Agreement and any attachments hereto, represent the entire agreement between the parties and supersedes any prior oral or written understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day, month, and year first written above.

World Travel Service, Inc.	West Virginia University Board of Governors On behalf of West Virginia University	
By: Lana Shler	By: Danata Salotti	
Print: Lamar Shuler	Print Dana M. Salotti	
Its: President	Its:Category Manager	
Date: March 13, 2017	Date: March 23, 2017	

Approved as to form prior to acknowledgment thereof

this 1 th day of May , 20 16
Patrick Morrisey, Attorney General



EXHIBIT A

SERVICES

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth below ("services") in accordance with the Vendor's response to RFP 90003586D, with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University.

Vendor shall provide University access to a corporate online booking tool ("Concur Travel") owned by Concur Technologies, Inc., which is capable of securing airline, hotel, car rental, rail and other travel related reservations using a web-based program. There are no additional charges to the University related to the use of this tool.

The Services shall include the following travel related services and shall be offered in the most appropriate manner.

A. Full service domestic and international travel management, including but not limited to the following:

 Airfare: Vendor shall offer all airfare travel arrangements in compliance with University Travel Regulations and will ensure the lowest applicable fare.

Hotels: Vendor shall offer to University all Vendor negotiated programs, including amenities, relating to overnight accommodations
available to Vendor pursuant to University travel rules and policies.

Car Rentals: Vendor shall offer to University all Vendor negotiated programs, including special rates, relating to vehicle rental
programs available to Vendor which are in compliance with University travel rules and policies.

B. Vendor shall manage and provide comprehensive services for University faculty, staff and students for domestic and international Study Abroad Programs including, but not limited to:

assisting in the creation and implementation of Faculty-Led Study Abroad Programs;

- facilitating program payments by transferring money to appropriate agencies abroad through various payment methods (i.e. cash, check, credit card, or wire transfer);
- booking lowest logical airfare, land and tour packages with multiple options in a timely fashion, arrange guides, buses, boats/ferries, meet and greet services, international ground services, and taxi/airport shuttle services;

4. provide multiple hotel options for individuals, large groups and small groups;

- 5. provide assistance with obtaining visa and other travel related documentation for individuals and groups; and
- provide receipts for any programmatic expenses incurred abroad
- C. Vendor shall institute procedures for ticketing, including but not limited to, providing all paper and/or electronic ticket itineraries and invoices, showing flight numbers, departure and arrival times, names associated with the ticket numbers for group travel and confirmation numbers for ground arrangements, no later than twenty-four (24) hours prior to departure to University administration, travelers and business office.
- D. To the greatest extent possible, Vendor shall allow University to recapture any unused travel services contracted for on behalf of the University by Vendor and shall notify University regarding any terms and conditions of such recapture.
- E. University requires that the lowest available rate be booked for all travel. Rates may be commissionable as long as the commission does not result in an increased cost to the University.
- F. Vendor shall maintain a reservation system capable of securing air, hotel and car rental reservations as requested by University, all in accordance with University's policies and procedures governing travel.
- G. Vendor may collect data on University's travel expenditures for use in the negotiation of special rates for air, hotel and car rental.
- H. Vendor shall obtain and maintain all ARC (Airlines Reporting Corporation) requirements on University's behalf including daily ARC report submission in addition to other related responsibilities.

WVU TC001 (V:03/2011)

Page 7 of 10



- I. With respect to domestic U.S. airfares, if a client traveler finds an available online web airfare on a major U.S. airline website which is lower than the lowest airfare offered by Vendor, Vendor will match that airfare or pay the difference between that airfare and the lowest airfare offered by Vendor. Client must provide written and verifiable documentation that a lower online web airfare is available for the same routing as the lowest airfare offered by Vendor. The airfare must be the same class of service, airfine, flight, dates, times, cabin and available for purchase at the rate posted. The online airfare and our fare must be quoted on the same day. Consolidator and tickets offered through auction websites (such as Priceline.com) and other online travel agency sites are excluded from this webfare guarantee. Vendor reserves the right to cancel, modify, or otherwise change this webfare guarantee at any time, upon notice.
- J. If applicable, University will assist Vendor in complying with applicable laws, rules and regulations of local, state or federal government, airlines, or of the Airlines Reporting Corporation ("ARC") and the International Airlines Travel Agent Network ("IATAN"). The parties agree to take all reasonable measures to protect against the misappropriation or other misuse of ARC traffic documents. University agrees to pay all debit memos Vendor receives in providing Services hereunder, unless such debit memos are due to Vendor's fault or negligence.
- K. Vendor will provide trained and experienced Corporate Travel Counselors to staff the designated travel Team. In addition, Vendor will provide supplemental staff to fill in during vacation, illness, or other time off for the dedicated team members.
- L. Vendor will provide University with a 24-hour emergency travel service phone number to be utilized for emergency assistance by travelers outside of normal business hours. See Exhibit B for pricing. A report will be provided to University upon request which provides the detail related to each call charged.
- M. Vendor shall provide daily reports to expense reporting tools or financial systems as required by WVU.
- N. Volume Incentive: Vendor will provide University with a volume incentive in conjunction with the execution of this agreement in the amount of \$2,500.00 per \$1,000,000.00 in annual airline ticket spend. If University's total net airline expenditures with Vendor exceed \$1,000,000.00 within the initial year of this agreement, University will receive \$2,500.00 for each \$1,000,000.00 in airline spend with a maximum incentive of \$10,000,000.00. The volume incentive amount will be utilized at University's direction towards the purchase of airline tickets on Delta Air Lines. University designated representative will instruct Vendor staff regarding the utilization of these funds and a statement will be provided to University upon request outlining the beginning balance, amounts utilized and ending balance. All unused funds will expire with the termination or expiration of this agreement.
- O. Reporting: Vendor will provide University with standard management reports along with ad-hoc reports, as requested. Vendor will provide University with management information to document and analyze travel expenditures. Vendor will not provide University's travel data to outside vendors without University's express permission.



EXHIBIT B

PRICING

University agrees to pay Vendor for the services performed hereunder on the following basis. University will not reimburse or otherwise be responsible for fees not contained in the rate schedule below. Any terms or conditions contained in an invoice which are different from, in addition to, or which vary the terms and conditions of this agreement, shall not be binding and University objects thereto.

Fees are charged at the time of ticketing.

Rate Schedule:

Transaction Fees	Fees in US Dollars
Domestic Air	\$18.00
International	\$18.00
VIP Air	\$18.00
Non GDS Air	\$18.00
Refund Air	\$0.00
Revalidation/Reconfirmation of Air Tickets at Airline Office	\$0.00
Reissuance of Air Tickets	\$18.00
Rerouting of Air Tickets (Reissue of ticket)	\$18.00
Cancellation of Air Tickets (excluding airline administration charges)	\$0.00
Void Air Tickets (Within void timelines)	\$0.00
Processing Redemption of Tickets with Airline Loyalty Miles	\$18.00
Domestic Rail	\$18.00
International Rail	\$18.00
Refund Rail	\$0.00
Hotel only (GDS) - without air transaction	\$0.00
Hotel (Non GDS)	\$0.00
Hotel voucher payment/billback	\$0.00
Car Rental only (GDS) - without air transaction	\$0.00
Black Car Service only-without air transaction	\$0.00



Online Fulfillment Fees	
Touchless - Air Domestic	\$6.0
Touchless - Air International	\$6.0
Touched - Air Domestic	\$10.00
Touched - Air International	\$10.00
Touchless - Rail	\$6.00
Touched - Rail Domestic	\$10.00
Touched - Rail International/Eurostar	\$10.00
Touchless - Hotel/Car	\$0.00
Touched - Hotel/Car	\$0.00
Additional Services	
Paper Ticket Air - Surcharge	\$0.00
Paper Ticket Rail - Surcharge	\$0.00
After Hour Service - Emergency	
After Hour Service - Non Emergency	\$20.00 \$20.00
After Hour Service - Issuance of Tickets	\$18.00
Visa Application Paper - Normal Processing Service Fee (excluding government Visa fee)	\$70.00
Visa Application Electronic - Normal Processing Service Fee (excluding government Visa fee)	\$70.00
Visa Application Paper - Urgent Processing Service Fee	\$70.00
Visa Application Electronic - Urgent Processing Service Fee	
Passport Service Fee - Normal	\$70.00
Passport Service Fee - Urgent	\$70.00
China Invitation Letter Issuing	\$70.00
Unscheduled Normal Delivery to Destinations Other than Designated	\$0.00
Local Account Management	Pass-through costs
Local Account Management	\$0.00

Set Up Fee

University agrees to pay a one-time fee of \$2,500 for single sign on (SSO) technology setup on Concur. Vendor shall be responsible for payment to Concur and will invoice University for the pass-through cost.

WVU TC001 (V:03/2011)

STATE OF WEST VIRGINIA Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE: Vendor's Name: World Travel Service, Inc. Authorized Signature: Date: 3-7-17 State of North Carolina County of Wall, to-wit: Taken, subscribed, and sworn to before me this 8th day of March, 2017. My Compassion Explication of the process of the proces



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/30/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to

the	terms and conditions of the policy tificate holder in lieu of such endors	, certain p	oolicies may require an er	•	• •				
PRODU	JCER			CONTA NAME:	СТ				
2095	Insurance - Knoxville Lakeside Centre Way			PHONE (A/C, No E-MAIL	_{o, Ext):} 000-00	88-0111	FAX (A/C, No): 8	865-588-0112	=
Suite				ADDRE	SS:				_
Knox	ville TN 37922				INS	URER(S) AFFOR	DING COVERAGE	NAIC #	_
				INSURE	R A: Massacl	husetts Bay	Insurance Company	22306	
INSUR	ED '	WORLTR	A-01	INSURE	RB:				
	d Travel Service, Inc.			INSURE	RC:				
	1 Parkside Drive ville TN 37922			INSURE	RD:				
INIOA	VIIIC 114 37 322			INSURE	RE:				
				INSURE	RF:				
cov	ERAGES CER	TIFICATE	E NUMBER: 1832946815	5			REVISION NUMBER:		
	S IS TO CERTIFY THAT THE POLICIES								
	ICATED. NOTWITHSTANDING ANY RE RTIFICATE MAY BE ISSUED OR MAY								
	CLUSIONS AND CONDITIONS OF SUCH							ALL THE TERMS	'
INSR LTR	TYPE OF INSURANCE	ADDL SUBR			POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
Α	COMMERCIAL GENERAL LIABILITY	YY	OD5 D110026 00		12/1/2016	12/1/2017	EACH OCCURRENCE	\$1,000,000	
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000	
							MED EXP (Any one person)	\$5,000	
							PERSONAL & ADV INJURY	\$1,000,000	

LTR	TR TYPE OF INSURANCE		WVD	POLICY NUMBER	(MM/DD/YYYY)	(MM/DD/YYYY)	LIMIT	S
Α	X COMMERCIAL GENERAL LIABILITY	Υ	Υ	OD5 D110026 00	12/1/2016	12/1/2017	EACH OCCURRENCE DAMAGE TO RENTED	\$1,000,000
	CLAIMS-MADE X OCCUR						PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000
	X POLICY PRO- JECT LOC						PRODUCTS - COMP/OP AGG	\$2,000,000
	OTHER:							\$
Α	AUTOMOBILE LIABILITY	Υ	Υ	AW5 D110006 00	12/1/2016	12/1/2017	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	X HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$
								\$
Α	X UMBRELLA LIAB X OCCUR	Υ	Υ	OD5 D110026 00	12/1/2016	12/1/2017	EACH OCCURRENCE	\$10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	\$10,000,000
	DED X RETENTION \$5,000							\$
Α	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Υ	WZ5 D098244 00	12/1/2016	12/1/2017	X PER OTH- STATUTE ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A					E.L. EACH ACCIDENT	\$1,000,000
	(Mandatory in NH)	,					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
For Information Purposes Only Bond Department	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	Authorized Representative Jackson Vaughan
· · · · · · · · · · · · · · · · · · ·	•



Procurement Contracting & Payment Services One Waterfront Place / 3rd Floor / Don Knotts Blvd PO Box 6024 Morgantown WV 26506

Ph: 304-293-5711

Number:

U17ANTHONY

Please show this number on all packages and documents related to this Order.

J PCPS on the inte	rnet: http://pcps.wv	vu.edu				
Vendor: Anthony Travel, LLC P.O. Box 1086 LaFortune Student Center Notre Dame, IN 46556-1086TN 37922		Ship To: West Virginia University Athletics: P.O Box 0877 Morgantown, WV 26507-0877		Invoice To: West Virginia University Payment Services One Waterfront PI / 3rd FI / Don Knotts Blvd PO Box 6024 Morgantown WV 26506-6024 Ph: 304-293-5711 Itemize Invoices According to Purchase Order One (1) original invoice required		
-	Ship Via:	FOB:	Freight Terms:	Delivery Date:		
30 Net	N/A	N/A	N/A	Per Agreement		
a University a	ce of contract by	y and between W		Board of Governors on		
			March 31, 2020 agreement attached here	to as a part hereof.		
required; but, only to th	e extent the services rem	nain within	Total Amount of this Order: Ope	n End		
	Payment Terms: 30 Net titutes acceptanta University a management set erformed in account required; but, only to the	Ship To: West Virginia Un P.O Box 0877 Morgantown, W. STN 37922 Payment Terms: Ship Via: 30 Net N/A Attitutes acceptance of contract bea University and management services. April 1, 2017 and extension accordance with the service of the services renewed to the required; but, only to the extent the services renewed to the services renewed	West Virginia University Athletics: P.O Box 0877 Morgantown, WV 26507-0877 Payment Terms: 30 Net Ship Via: N/A AGREEMENT Ititutes acceptance of contract by and between Wa University and Anthony To management services. April 1, 2017 and extending through informed in accordance with the standard form of a	Ship To: West Virginia University Athletics: P.O Box 0877 Morgantown, WV 26507-0877 STN 37922 Payment Terms: 30 Net Ship Via: N/A AGREEMENT Ititutes acceptance of contract by and between West Virginia University Italianagement services. April 1, 2017 and extending through March 31, 2020 April 1, 2017 and extending through March 31, 2020 Invoice To: West Virginia University PO Box 6024 Morgantown W/Ph: 304-293-571 Itemize Invoices One (1) c March 30 Net N/A Ititutes acceptance of contract by and between West Virginia University Italianagement services. April 1, 2017 and extending through March 31, 2020 Invoice To: West Virginia University Italianage No. Morgantown W/Ph: 304-293-571 Itemize Invoices One (1) c March 31, 2020 Invoice To: West Virginia University Italianage No. Agreement Terms: N/A Total Amount of this Order: Open		

All CONTRACTS / PURCHASE ORDERS / AGREEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS INCLUDED HEREIN

WVU FOIA #19209 (SUP)-122



AGREEMENT FOR SERVICES
Between
WEST VIRGINIA UNIVERSITY
And
ANTHONY TRAVEL, LLC

This Service Agreement ("Agreement") made this 13th day of March, 2017 by and between the West Virginia University Board of Governors on behalf of West Virginia University and its Department of Intercollegiate Athletics located in Morgantown, WV 26506 ("University") and Anthony Travel, LLC, located at 7920 Beltline Rd, Suite 1010, Dallas, TX 75254 ("Vendor").

WHEREAS, the University has selected Vendor pursuant to the laws of the State of West Virginia through competitive request for proposal (RFP) #90003586D. Award of business is made as a multiple, non-exclusive award.

WHEREAS, the University desires to have the Vendor perform certain professional services;

WHEREAS, the Vendor represents that he/she is qualified, ready, willing and able to perform such professional services; and

THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. Scope of Work.

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth in Exhibit A ("Services"), with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University. The Services shall include the following: Travel Management

All rights granted to Vendor and services to be performed under this Agreement apply only to West Virginia University Department of Intercollegiate Athletics. This Agreement shall have no force or effect on any other division, department, unit regional campus or affiliated entity of the University.

Agreement Term.

This Agreement shall commence on April 1, 2017, and will terminate on March 31, 2020, or as otherwise stated in this Agreement. The University reserves the right to alter the starting and ending dates according to the needs of the University, with initial term still covering three year span. The agreement may be renewed for one (1) year periods thereafter, if agreed upon by both parties in writing.

3. Compensation.

- A. The University will pay Vendor for the Services performed hereunder on the following basis set forth in Exhibit B (Pricing); all expenses agreed to by the parties shall be included in the daily rate or fixed fee compensation. University will not reimburse or otherwise be responsible for fees not contained therein. Any terms or conditions contained in an invoice or rate schedule which are different from, in addition to, or which vary the terms and conditions of this Agreement, shall not be binding upon University and University objects thereto.
- B. Travel will be charged to University's purchasing card program or another mutually agreed upon payment method. Payment may be made upon submission of detailed invoices and any other documentation required for such payment based upon Section 3 A., above. Payment will only be made in the name of the Vendor as specifically identified and set forth in this Agreement. Invoices shall contain, or be attached to, supporting documentation that is satisfactory to the University which, at a minimum, shall state the Service rendered in detail, dates of Service, Contract Identification, and any additional information facilitating the proper allocation and payment of such invoice. Payment Terms shall be Net 30.
- C. If applicable, Vendor must be registered with the State of West Virginia pursuant to W. Va. Code §18B-5-5 before the Vendor is eligible to render services to the University. To be eligible to render services hereunder, Vendor must have on file with the West Virginia Purchasing Division a completed Vendor Registration and Disclosure Statement. By execution of this Agreement, Vendor warrants that it is a registered vendor with the State of West Virginia and in good standing.
- D. Upon request from University and upon execution of this Agreement, Vendor shall provide University with a completed original Department of the Treasury, Internal Revenue Service, Form W9 "Request for Taxpayer Identification Number and Certification."



- E. University shall not directly or indirectly be liable for taxes of any kind, except on airline tickets and other situations in which the tax exemption does not apply. To the extent allowed by law, University shall provide, upon the request of Vendor, all applicable tax exemption certificates.
- F. All invoices for Services shall be paid in arrears within thirty (30) days after the submission by Vendor of a valid invoice for Services rendered. Pursuant to W. Va. Code § 12-3-10, payments may only be made after the services have been performed. No deposit or prepayment may be requested by Vendor or paid by University.
- G. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and or otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these Services, this Agreement becomes void and of no effect after June 30.

Reporting.

In rendering the Services performed hereunder, the Vendor shall communicate with West Virginia University through its Procurement, Contracting and Payment Services Department to the attention of Rachel Hays, Associate Director of Payment Services.

University shall have the right, but not the duty or obligation, to inspect the work at any time to ensure compliance with the terms and provisions of this Agreement.

Method of Operations.

- A. Vendor shall promptly commence and diligently prosecute the Services in a safe, careful, skillful, efficient and workmanlike manner in accordance with recognized methods and practices, in compliance with all lawful policies of the University, and in compliance with all federal, state and local laws, rules and regulations, orders and permits, now existing or hereinafter enacted with respect to the Services and the Vendor, including but not limited to, laws relating to equal employment opportunity, as well as all generally accepted standards applicable to such work.
- B. Vendor certifies that it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Agreement pursuant to W. Va. Code § 5A-3-10a.
- C. Vendor submits that to its knowledge, no officer or employee of the State of West Virginia or University has participated in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W. Va. Code § 6B-1-2, et seq. (2010).
- D. Vendor certifies that it (a) has full power and authority to enter into this Agreement and (b) will not hereafter enter into any agreement or understanding with anyone else that might conflict with this Agreement.
- E. Unless otherwise directed by University in writing, Vendor shall secure all necessary permits, licenses, bonds (if applicable) and identification numbers required to perform the Services and shall pay all fees in connection therewith. Vendor shall be fully responsible for compliance with same and shall fulfill all obligations in relation thereto. If requested, Vendor shall provide University with copies of all permits, licenses, bonds and identification numbers required to perform the Services.
- F. Vendor shall provide to University all documentation necessary and required to show proof of insurance and proof of Workers' Compensation coverage prior to University executing this Agreement. Vendor further agrees and understands that failure to maintain the required insurance as stated in Section 14 may lead to termination of this Agreement pursuant to Section 14 below, in the sole discretion of University.



Relationship of the Parties.

Vendor shall perform the Services as an independent contractor. University is interested only in the results to be achieved and compliance by Vendor with the terms and conditions of this Agreement and all applicable laws. The conduct and control of the Services shall lie solely and exclusively with Vendor. Neither Vendor nor any of its agents, employees, subcontractors, servants or invitees (collectively "Vendor's Employees") shall be considered an agent or employee of University, nor shall anything in this Agreement be construed as creating a single enterprise or joint venture, for any purpose. Vendor's Employees are not entitled to any benefits provided by University for its employees. However, the work is subject to the right of inspection and approval by University and all applicable governmental authorities. Vendor shall be solely responsible for the acts of Vendor and Vendor's Employees during the performance of the Services.

7. Written Notice/Delivery. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent either by registered or certified mail with return receipt requested, facsimile transmission with confirmation of receipt, or by national overnight courier, addressed to the receiving party at the address below:

Anthony Travel, LLC
Attn: Senior Vice President, Collegiate Travel
P.O. Box 1086
LaFortune Student Center
Notre Dame, IN 46556-1086
Facsimile: (574) 631-8504

West Virginia University Athletics: Attn: Senior Associate Director of Athletics PO Box 0877 Morgantown, WV 26507-0877

Copy to: Rachel Hays One Waterfront Place PO Box 6024 Morgantown, WV 26506 Phone Number: (304) 293-8451

Email: Rachel.Hays@mail.wvu.edu



- 8. Examination of Records and Vendors Progress. The University shall have access to and the right to examine any pertinent books, documents, papers, and records of Vendor involving transactions related to this Agreement until the expiration of three years after final payment hereunder. In the performance of the Services, Vendor has the authority to control and direct the performance of the details of the work, the University being interested only in the results obtained. However, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection and supervision to secure the satisfactory completion thereof.
- 9. <u>Publicity.</u> It is also agreed that no advertising publicity matter having or containing any reference to West Virginia University, or in which the name is mentioned, shall be made use of by the Vendor or anyone on the Vendor's behalf unless and until the same shall have first been submitted to, and received the written approval of, an authorized representative of the University.
- 10. Non-Discrimination. The Vendor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- 11. Intellectual Property. All of the materials developed by Vendor and all materials prepared for an delivered to the University by Vendor under this Agreement shall belong exclusively to the University and shall be deemed to be works made for hire and the University shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title and interest therein, including the right to revise, edit, and distribute same. Notwithstanding the foregoing, nothing herein conveys or transfers ownership of or rights to Vendor's Intellectual Property. For the purpose of this Agreement, Vendor's Intellectual Property shall mean and include those tools, templates, reporting formats and other items or artifacts that Vendor employs as part of its normal business. In the event Services resulting from this Agreement include such Vendor's Intellectual Property, then Vendor hereby grants an limited, royalty free, exclusive right to University to use such Vendor's Intellectual Property as it deems fit to carry out the purposes contemplated by this Agreement.

Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the West Virginia University Office of Sponsored Programs, intellectual

property rights will be governed by the terms of the grant or contract to University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

- 12. Patent Rights. The Vendor agrees that any discovery or invention, whether or not subject to patent, developed as a direct result of work done under this Agreement, shall be the sole property of the University and the University shall have the exclusive right to any patent derived therefrom. Vendor further agrees to report promptly in writing to the University any discovery or invention developed under this Agreement.
- 13. <u>Indemnification.</u> Vendor agrees to indemnify, defend, and hold whole and harmless the University, its affiliates, and their respective Board of Governors, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on University premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 do not allow University to hold harmless or indemnify Vendor.
- 14. <u>Insurance.</u> During the term of the Agreement, Vendor shall procure, at its own expense, and maintain for the duration of the Agreement, the following insurance coverage from insurers licensed or registered to do business in the State of West Virginia: (a) Commercial general liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (b) Worker's Compensation insurance in accordance with applicable statutory limits (c) Commercial Automobile insurance in the amount of \$1,000,000 per occurrence for all owned, non-owned, hired. leased, rented, and employee non-owned vehicles, (d) where applicable, professional liability insurance of \$1,000,000 per claim/loss and \$2,000,000 annual aggregate, with proof that coverage shall remain in effect for a minimum of three years from the date of completion of the project. Vendor shall provide such other insurance as may be required by law. All insurance carried by Vendor in connection with the Services shall list University as an additional insured and such insurance shall be primary and not contributory as to any other insurance the University may have in effect. The Vendor shall provide a certificate of insurance to the University evidencing required coverage prior to commencement of the Services All policies shall provide a minimum of thirty (30) calendar day's written notice prior to cancellation or material change. The insurance company(ies)

WVU TC001 (V:03/2011)

Page 4 of 10



providing the above described coverage shall have an AM Best Rating of no less than (A-) excellent.

University does not express any opinion as to the sufficiency of the liability limits set forth above. The insurance required hereunder is not a limitation of any liability of Vendor.

- 15. **FERPA.** Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA) and University's FERPA Policy found at http://ferpa.wvu.edu/policy including FERPA's limitations on re-disclosure as set forth in 34 C.F.R § 99.33(a)(2).
- 16. <u>HIPPA.</u> Vendor shall, if applicable, meet the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the "Act"), the privacy standards adopted by the U.S. Department of Health and Human Services ("HHS"), 45 C.F.R. parts 160 and 164, subparts A and E (the "Privacy Rule"), the security standards adopted by HHS, 45 C.F.R. parts 160, 162, and 164, subpart C (the "Security Rule"), and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic Clinical Health Act, Division A, Title XIII of Pub. L. 111-5 and its implementing regulations (the "HITECH Act"), due to their status as a "Covered Entity" or a "Business Associate" under the Act. The Act, the Privacy Rule, the Security Rule, and the HITECH Act are collectively referred to as "HIPAA" for the purposes of this Agreement.
- 17. <u>Confidentiality of Information.</u> In order for the Vendor to effectively provide the Services required under this Agreement, it may be necessary or desirable for the University to disclose to the Vendor confidential and proprietary information and trade secrets pertaining to the University's past, present and future activities. The Vendor hereby agrees to treat information which has been designated to the Vendor by the University in writing as being confidential and proprietary information or trade secrets in a confidential manner. The Vendor further agrees that it will not disclose any such information so designated to anyone outside of the University during the period of this Agreement or thereafter without the prior written consent of the University, unless the Vendor is required to disclose any such information for the following reasons: 1) To comply with a legal or court order, 2) to defend itself or pursue its legal rights in a legal proceeding, or 3) to protect the health, safety, or welfare or others.
- 18. <u>Termination.</u> University reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice of 30 days to Vendor. Such notice shall be delivered pursuant to Section 6, above. Upon receipt of such notice, the Vendor shall, as notice directs: 1) discontinue all services affected; and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by the Vendor in performing this Agreement, whether completed or in progress. Vendor will be compensated for Services provided pursuant to this Agreement to the effective date of termination only.
- 19. <u>Force Majeure.</u> Neither Vendor nor University shall be liable for any failure or delay in its performance of this Agreement if such failure or delay is directly or indirectly occasioned by an event of Force Majeure. For purposes hereof, "Force Majeure" means any event beyond the control of either party and which is relied upon by either party as justification for

- delay in, or as excuse from complying with, any obligation required of the party under this Agreement, including, but not limited to: (i) an act of God, war, terrorism, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Services; (iii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of execution of this Agreement, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial or material adverse effect on the cost of performing the obligations herein; (iv) any work stoppages, strikes, picketing, labor dispute, or similar activities at the Premises; (v) the institution of a legal or administrative action or similar proceeding by any person or entity that delays or prevents any aspect of the Services. In the event of Force Majeure, and during the continuance thereof, the obligations under this Agreement shall be suspended and neither party shall have any liability to the other due to such event of Force Majeure or such suspension. If the Force Majeure continues unabated for a period of sixty (60) days and renders either party unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then either party shall have the right to terminate this Agreement and shall not have any liability to the other party other than any monetary obligations to the other which has become due prior to the date of such termination.
- 20. <u>Changes.</u> The University may, from time to time, require changes in the scope of the Services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.
- 21. <u>Jurisdiction; Governing Law.</u> The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement. All disputes arising out of related to this Agreement shall be filed by Vendor in the West Virginia Court of Claims in Kanawha County or filed by University in a court of competent jurisdiction.
- 22. <u>Successors and Assigns.</u> This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns. The personal skill, judgment and abilities of the Vendor are an essential element of this Agreement. Therefore, although the parties recognize that the Vendor may employee qualified personnel to provide Consulting Services under the Vendor's supervision, the Vendor shall not assign, transfer or subcontract any portion of the Consulting Services to another party without the prior written consent of the University.
- 23. <u>Headings.</u> The headings of the herein are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 24. <u>Non-Waiver Provision.</u> The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.



- 25. <u>Severability.</u> Each provision of this Agreement is to be interpreted in such a way as to be valid under applicable law. If any provision is invalid under applicable law, it is to be considered ineffective only to the extent of such invalidity and the remainder of the provision and the other provisions of this Agreement remain valid.
- 26. **Survival.** The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, indemnifies, certifications, warranties, and any expressed limitation of or releases from liability, shall continue as valid and enforceable obligations of the parties
- notwithstanding any such termination, cancellation, completion or expiration.
- 27. <u>Authorized/Electronic Signatory.</u> If the Agreement is signed by someone other than the Vendor, the person signing expressly warrants that he/she is the authorized person/entity to execute this Agreement for the Vendor. Any signed document transmitted by fax or other electronic means shall be considered an original document and shall have the binding and legal effect of an original document.
- 28. <u>Entire Agreement.</u> This Agreement and any attachments hereto, represent the entire agreement between the parties and supersedes any prior oral or written understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day, month, and year first written above.

Anthony Travel, LLC.	West Virginia University Board of Governors On behalf of West Virginia University
By: Lut Wall	By: Vanan Salotti
Print: Pat Walsh	Print:_ Dana M. Salotti
Its: Senwr Vice Prendent	lts: Category Manager
Date: 3 (3) 17	Date:_ 3/23/17

Approved as to form prior to acknowledgment thereof

Patrick Morrisey, Attorney General

Chief Counsel



EXHIBIT A

SERVICES

Vendor shall provide the labor, supervision, equipment, materials, supplies and other necessary items to perform the professional services set forth below ("services") in accordance with the Vendor's response to RFP 90003586D, with the standard of professional care and skill customarily provided in the performance of such Services and to the satisfaction of the University.

Vendor shall provide University access to a corporate online booking tool ("Concur Travel") owned by Concur Technologies, Inc., which is capable of securing airline, hotel, car rental, rail and other travel related reservations using a web-based program. There shall be no additional charges to the University related to the use of this tool, unless University requests customization that results in additional programming and pass-through costs from Concur.

The Services shall include the following travel related services and shall be offered in the most appropriate manner.

- A. Full service domestic and international travel management, including but not limited to the following:
 - 1. Airfare: Vendor shall offer all airfare travel arrangements in compliance with University Travel Regulations and will ensure the lowest applicable fare.
 - 2. Hotels: Vendor shall offer to University all Vendor negotiated programs, including amenities, relating to overnight accommodations available to Vendor pursuant to University travel rules and policies.
 - 3. Car Rentals: Vendor shall offer to University all Vendor negotiated programs, including special rates, relating to vehicle rental programs available to Vendor which are in compliance with University travel rules and policies.
- B. University requires that the lowest rate be selected when booking all travel, unless traveler specifically is given approval for a higher selection. Rates may be commissionable as long as the commission does not result in an increased cost to the University.
- C. Vendor shall institute procedures for ticketing, including but not limited to, providing all paper and/or electronic ticket itineraries and invoices, showing flight numbers, departure and arrival times, names associated with the ticket numbers for group travel and confirmation numbers for ground arrangements, no later than twenty-four (24) hours prior to departure to University administration, travelers and business office.
- D. To the greatest extent possible, Vendor shall allow University to recapture any unused travel services contracted for on behalf of the University by Vendor and shall notify University regarding any terms and conditions of such recapture.
- E. Vendor shall maintain a reservation system capable of securing air, hotel and car rental reservations as requested by University, all in accordance with University's policies and procedures governing travel.
- F. Vendor may collect data on University's travel expenditures for use in the negotiation of special rates for air, hotel and car rental.
- G. Vendor shall provide data feeds to expense reporting tools or financial systems as required by WVU.
- H. Services, Maintenance, and Environment. University shall supply space in the Coliseum for the operation of a travel agency to provide travel management services for West Virginia University ("Premises"). University shall supply the following items for use by Vendor: internet connections to the campus network, a desk, two chairs, file cabinet, campus telephone, two phone lines, and a fax line. WVU Athletics shall also provide such services, including electricity, heat, local telephone service, and janitorial service, as are necessary for the operation as a travel agency. University will also allow Vendor use of a copy machine. All other furnishings or service items are the responsibility of Vendor.

In exchange, Vendor shall pay as Monthly Rent for the supplied space, a sum equal to \$375.00, the established Indirect and Direct costs for the building, its furnishings, services, and utilities and other factors which comprise Indirect and Direct cost factors; such rates to be reassessed annually effective January 1st of every year. In addition, the Vendor's staff will be required to adhere to the University's parking regulations relative to contracting parking permits, if applicable, and shall have free use of designated visitor parking for visitors only. University reserves



the right to relocate Vendor if space is otherwise needed while providing same or similar furnishings, utilities, and services with the Monthly Rent reevaluated accordingly.

This contract represents the non-exclusive right of space use by Vendor of the Premises and includes the use of such common spaces as contained in the surrounding building (corridors, restrooms, etc.) and lands. Keys or access codes will be provided for Vendor Premises access; however, Vendor's regular hours of business should be scheduled to coincide with the operating hours of the University which is currently 8:15 AM to 4:45 PM, Monday through Friday with University holiday closures honored. Vendor shall maintain the Premises, surrounding facility, and campus as a tobacco-free environment in accordance with University's policy. Vendor shall not modify or alter the Premises without the express written consent of University, including approval right for signage to be in adherence with University sign and trademark policies. Vendor shall report maintenance needs to WVU Athletics promptly. Any repair needs resulting from Vendor's misuse of the premises shall be reimbursed by Vendor to University accordingly.

University retains the right of entrance and access to maintain the Premises. The Premises shall be vacated upon completion of the contracted term with all provided furnishings and utilities left intact, all surplus and trash properly disposed of, with Premises left in broom-clean condition, and all keys, parking passes, etc. promptly returned.

- I. Improvements. Vendor may make any non-structural improvements to the Premises as it deems necessary or desirable for use of the Premises as a travel agency, provided that such improvements are within good taste. Any structural improvements to the Premises may be made by Vendor only after receiving the prior written approval of University.
- J. Directory Listings and Signage. Throughout the term, University will provide Vendor with appropriate signage as is customary to accomplish effective transaction of business.
- K. After Hours Support. Vendor will provide after hours, holiday, and weekend emergency travel support through a combination of Vendor's onsite account managers, as well as Vendor's designated after-hours personnel. Additionally, Vendor will maintain its relationship with CCRA Solutions which will provide travel support on a 24/7/365 basis.
- L. Other rights and obligations of Vendor and University
 - 1. <u>Services</u>. Throughout the term of this Agreement, Vendor will provide a wide range of individual, team, and group travel services to the Department of Intercollegiate Athletics, to include scheduled air services, charter air services, hotel rooms, ground transportation vehicles, international team tours, and other services as needed by University.
 - 2. Personnel. Vendor will secure at its own expense all personnel needed to perform the services under this agreement. Such personnel shall not be employees of, or have any individual contractual relationship with, University. Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor employees shall remain under the direct control of Vendor at all times and Vendor shall be solely responsible for their actions and/or the payment of their salaries, wages or other remuneration. While on University Premises, all employees will comply with appropriate University policies and will conduct themselves in a manner that will not discredit the University.
 - Vendor will offer University the opportunity to participate in the interview and selection process for the on-site travel consultant. Vendor will have the ultimate responsibility for all hiring and employment issues of the employee.
 - University agrees not to solicit (directly or indirectly), recruit, or employ any employee of Vendor during the term of this agreement and for two-years after termination of the agreement without the express written approval to do so by Vendor.
 - 3. <u>Back-up support</u>. For short-term absences from the office, Vendor will program the phone, if possible, to roll to its back-up sports travel consultants. For planned long-term absences of one or more Vendor personnel of two weeks or more when University demand necessitates an on-site presence, Vendor will send back-up personnel to service University.
 - 4. <u>Trademarks</u>. Any and all use of University marks must be pre-approved in writing in advance of publication by University's Office of Trademark and Licensing, which can be reached at <u>trademarklicensing@mail.wvu.edu</u>.
 - 5. Parking. Vendor and its employees shall have the same parking privileges as is customary.
 - 5. Reporting. Vendor shall provide comprehensive reports to University that allow University to financially manage and audit its travel activities. Both parties shall mutually agree upon the type, content, detail, and periodic delivery of such reports.
- M. Quality Control. Vendor will work closely with University to assure full compliance with travel policy and procedures. Vendor will report exceptions and granted exceptions to University as part of the regular reporting process.
- Vendor shall send out customer surveys once a year to staff designated by University requesting feedback on Vendor performance. The management of Vendor shall meet with the appropriate business staff at least once a year to discuss the survey feedback and any operational issues.



N. Confidentiality. During the term of this Agreement and thereafter, Vendor shall not disclose or use for the benefit of other than University any confidential or proprietary information disclosed to Vendor as a result of this Agreement. All information supplied to Vendor by University shall remain the property of University. Vendor represents that it does not have in its possession and has not used for the benefit of University any confidential information or documents belonging to others. Vendor represents that its retention by University will not require it to violate any obligation to others, under agreement or otherwise, or to violate any confidence of others. Vendor knows of no written or oral agreement or of any other impediment which would inhibit or prohibit the relationship with University provided for herein. Vendor represents that it will not, by signing this Agreement or performing the services provided for herein, violate any rights, including but not limited to intellectual property rights such as trademark, trade secret and copyright, of any other individual or entity. West Virginia University, as an agency of the State of West Virginia, is subject to the West Virginia Freedom of Information Act (W. Va. Code §§ 29B-1- to -7).

- O. Laws and Ordinances. Vendor agrees at its own cost and expense to comply with all state, county and municipal laws and ordinances and with University policy applicable to its travel operations.
- P. Nondiscrimination. Vendor shall not discriminate against any qualified employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, religion, color, sex, disability, national origin, or ancestry. Vendor agrees to comply with all the provisions contained in the Equal Opportunity Clause, quoted in Executive Orders No. 11246 and No. 11375, and contained in the Indiana Civil Rights Law, quoted in IC 1981, 22-9-1-10, as amended; The Americans with Disabilities Act of 1990 (ADA) which are hereby incorporated in this Agreement by reference. As used therein the word "contractor" shall be deemed to mean "Vendor", and the word "contracts" shall refer to this Agreement. In addition, Vendor shall cause the Equal Opportunity Clause and the ADA to be included in their subcontracts or purchase orders hereunder unless exempted by rules, regulations and orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended.
- Q. Background Checks. Background check(s) shall be conducted by Vendor at the discretion of the University for any and all onsite consultants. Vendor will not permit any person to perform services if such person has not successfully completed a background and any other applicable check in accordance with University's requirements. Upon request from University, Vendor shall provide evidence that such person(s) have successfully completed such checks.
- R. Onsite Agent. University shall be closely involved in the hiring process for the onsite agent and must give written approval of the final candidate. Vendor may replace onsite agent with prior written consent of University. If Vendor intends to change the onsite agent, Vendor shall first give written notice to University at least thirty (30) days prior to departure of the current onsite agent, unless such prior written notice is not possible, in which case Vendor shall give University the best opportunity possible under the circumstances to approve in advance the replacement candidate. Vendor shall act diligently to replace onsite agent as required, but in all events the onsite agent shall be replaced within forty-five (45) days, unless mutually agreed between the University and Vendor that additional time is needed to secure the best long-term replacement. During the transition period, Vendor shall ensure that proper coverage is provided to University.
- S. Removal. University may request the removal of the onsite agent upon written notice to the Vendor. Such notice will contain reasonable detail of the reasons for such request. The Vendor shall appoint a replacement onsite agent in accordance with the provisions of section T, above.



EXHIBIT B

PRICING

University agrees to pay Vendor for the services performed hereunder on the following basis. University will not reimburse or otherwise be responsible for fees not contained herein. Any terms or conditions contained in an invoice which are different from, in addition to, or which vary the terms and conditions of this agreement, shall not be binding and University objects thereto.

Base Fee

University will pay Vendor a monthly management fee of \$7,500 for the first year. Years two and three shall increase 2% annually. This fee is all-inclusive.

Year	Annual Fee
Year 1	\$90,000 USD
Year 2	\$91,800 USD
Year 3	\$93,636 USD

Payment terms shall be Net 30 from receipt of a valid invoice. Payment cannot be made via credit card.

No payments will be due prior to the official start date of the onsite agent. If University requests that vendor transact any travel prior to the start date of the onsite agent, then a prorated payment will be made to Vendor at a mutually agreed upon amount.

STATE OF WEST VIRGINIA Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE: Vendor's Name: Anthony Travel Authorized Signature: Fat wall Date: March 15, 2017 State of Indiana County of St. Joseph to-wit: Taken, subscribed, and sworn to before me this 15th day of March 2017. My Commission expires October 25 , 2023. AFFIX SEAL HERE NOTARY PUBLIC Parcela J. Eisemann Seal

Notary Public - State of Indiana St Joseph County My Commission Expires Oct 25, 2023

WVU FOIA #19209 (SUP)-133